

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC024460
Case Name	Christine Sciortino v. Entertainment Partners
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0439
Number of Pages of Decision	32
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Michael Rolenc
Respondent Attorney	Derrick Lloyd

DATE FILED: 11/3/2025

/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 Temporary Disability	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTINE SCIORTINO,

Petitioner,

vs.

NO: 20 WC 24460

ENTERTAINMENT PARTNERS PRODUCTION SERVICES,

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 left shoulder condition is causally related to her November 7, 2019 work accident; entitlement to Temporary Total Disability benefits; entitlement to incurred medical expenses and whether Petitioner's care was within her allowable choices of physicians; and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, supplements and corrects 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

The Arbitrator found Petitioner's current left shoulder condition remains causally connected to her undisputed November 7, 2019 accident. Our review of the evidence yields the same result. We write separately to address Respondent's argument on Review and provide our assessment of the contrary causation opinion of Respondent's §12 physician, Dr. Troy Karlsson.

The Commission finds Dr. Karlsson's opinions are ill-informed and entitled to little weight. Specifically, the Commission concludes Respondent's failure to provide the doctor with all the relevant medical records created an insurmountable foundational flaw in the basis of the doctor's opinions. We observe that for the July 2, 2021 §12 examination, Respondent only presented Dr. Karlsson with Dr. Chams' treatment records through January 27, 2021 and, moreover, Respondent did not provide Dr. Karlsson with any post-operative physical therapy records; as such, there are

five months of follow-up evaluations as well as six months of physical therapy notes that Dr. Karlsson did not review prior to opining Petitioner was at maximum medical improvement (“MMI”). The Commission observes these un-considered treating records consistently demonstrate ongoing functional deficits on exam. Significantly, the re-evaluation most contemporaneous to the July 2, 2021 §12 exam—Dr. Chams’ July 8, 2021 office visit—documents objective findings of positive impingement sign, decreased range of motion, and decreased strength; in contrast to Dr. Karlsson’s MMI opinion, Dr. Chams ordered additional physical therapy and maintained Petitioner’s off work status. PX2. Similarly, for Dr. Karlsson’s repeat §12 examination on February 10, 2023, Respondent again withheld Dr. Chams’ post-January 2021 records and instead provided Dr. Karlsson with a selection of Athletico records (August 25, 2021; December 13, 2021; December 17, 2021; January 14, 2022; and February 21, 2022 FCE). To be clear, Dr. Karlsson’s opinion that Petitioner did not need “any care whatsoever after the time I saw her in July 2021” was made without the benefit of reviewing the symptomology and physical examination findings recorded by Dr. Chams over the 15 months of re-evaluations between January 2021 and April 19, 2022. The Commission finds Dr. Karlsson’s opinions are incompatible with the treating records and his belief that Petitioner reached MMI on July 2, 2021 is neither well-founded nor persuasive. *See Sunny Hill of Will County v. Illinois Workers’ Compensation Commission*, 2014 IL App (3d) 130028WC, ¶ 36 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.) The Commission finds Petitioner’s left shoulder condition is causally related to the November 7, 2019 work accident.

Corrections

1. The Commission corrects the scrivener’s error in the Order to reflect the 123 2/7 weeks of awarded TTD benefits represent December 14, 2019 through April 24, 2022.

2. The Commission corrects the Decision to reflect the employee’s burden of proof for obtaining compensation under the Act is set forth in §1(d) (820 ILCS 305/1(d)).

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 28, 2024, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,213.03 per week for a period of 123 2/7 weeks, representing December 14, 2019 through April 24, 2022, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of \$136,873.46 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses incurred for treatment of Petitioner's left shoulder as detailed in Petitioner's Exhibit 4 (\$24,441.00 to Hawthorn Surgical Center; \$14,009.50 to Illinois Bone & Joint Institute - Chicago; \$1,005.00 to Illinois Bone & Joint Institute - Des Plaines; and \$16,979.00 to Athletico), as provided in §8(a), subject to §8.2 of the Act, as well as Petitioner’s out-of-pocket medical expenses of \$1,625.97. Respondent is entitled to credit for bills previously paid. Respondent shall make this payment directly to Petitioner’s attorney in accordance with Commission Rule 9080.20.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$836.69 per week for a period of 62.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 12.5% loss of use of the person as a whole. Respondent shall have a credit of \$8,366.90 for the PPD advance paid on April 13, 2021.

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. 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

November 3, 2025

RAW/mck

/s/ Raychel A. Wesley

O: 9/24/25

/s/ Carolyn M. Doherty

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/s/ Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION
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Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Joseph Amarilio, Arbitrator

Petitioner Attorney	Michael Rolenc
Respondent Attorney	Derrick Lloyd

DATE FILED: 10/28/2024

/s/ Joseph Amarilio, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 22, 2024 4.31%

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Christine Sciortino
 Employee/Petitioner

Case # **20WC 024460**

v.

Consolidated cases: **N/A**

Entertainment Partners Production Srvs
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was electronically mailed to each party. The matter was heard by the Honorable **Joseph Amarilio**, Arbitrator of the Commission, in the city of **Chicago**, 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. ☐ 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 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 \$94,616.08; the average weekly wage was \$1,819.54.

On the date of accident, Petitioner was 30 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 \$136,873.46 for TTD, \$0 for TPD, \$0 for maintenance, and credit for \$ 8,366.90 for prepaid PPD benefits for a total credit of \$145,240.36.

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

ORDER

MEDICAL: The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical treatment for her right shoulder in the amount of \$24,441.00 to Hawthorn Surgical Center; \$14,009.50 to Illinois Bone & Joint, \$1,005.90 to Illinois Bone & Joint Institute; and, \$16,979.00, pursuant to the Medical Fee Schedule and Sections 8(a) and 8.2 of the Act and pay Petitioner's out of pocket medical expenses of \$1,625.97. Respondent is entitled to credit for bills previously paid. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

TTD: Respondent shall pay Petitioner temporary total disability benefits of \$1,213.03 per week for 123-2/7th weeks, commencing December 14, 2019 through April 23, 2022, as provided in Section 8(b) of the Act.

PPD: Respondent shall pay Petitioner permanent partial disability benefits of \$836.69 per week for 62.5 weeks because the injury sustained caused the 12.5% 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.

/s/ Joseph D. Amarilio
Signature of Arbitrator Joseph D. Amarilio

October 28, 2024

ATTACHMENT TO ARBITRATION DECISION**STATEMENT OF FACTS AND CONCLUSIONS OF LAW****I. Preliminary History**

Ms. Christine Sciortino (“Petitioner”), by and through her attorney, filed an Application for Adjustment of Claim for benefits under the Workers' Compensation Act (“Act”) (820 ILCS 305/1 et seq.). Petitioner alleged she sustained an accidental injury on November 7, 2019 that arose out of and in the course of her employment while working for Entertainment Partners Production Svcs. (“Respondent”).

The parties proceeded to hearing on July 29, 2024 and jointly submitted a Request for Hearing Form representing that the following five (5) issues were in dispute: (1.) Whether Petitioner’s current condition of ill-being is causally connected to the injury sustained on November 7, 2019; (2) Whether Respondent is liable for unpaid medical bills; (3) Whether Petitioner is entitled to temporary total disability benefits (TTD); (4) The nature and extent of Petitioner’s injury; and, (5) Whether Respondent is entitled to credit of \$8,366.90 for prepaid permanent partial disability (PPD) benefits representing 10 weeks of PPD or 2% of a person pursuant to Section 8(d)2 of the Act. Additionally, at the start of trial, Respondent claimed that Petitioner may have exceeded her choice of two physicians. (Tr. .6). The parties requested a written decision that includes findings of fact and conclusions of law. (Arb.X 1)

II. Statement of Facts**PETITIONER’S TESTIMONY**

Petitioner testified that she was employed by Respondent as a makeup artist on November 7, 2019. (Tr. 9) At that time, she was working on season four of *Fargo*. Her job duties required her to apply the actors’ makeup and do touchups throughout the course of long filming days. Actors appeared for makeup throughout the course of the filming day. Her duties included traveling with the actors to the location where the scene was being shot. Petitioner mentioned that she also worked on shows like *Chicago Fire*, *Empire*, various movies. (Tr. 9-10)

On November 7, 2019, she was on set, sitting in a chair while filming was taking place when another employee tripped, fell, and landed on Petitioner, knocking her to the ground and falling on top of her. Petitioner fell onto her right side, with the coworker landing on top of Petitioner’s left side. Petitioner testified that she immediately felt severe pain in her left shoulder. (Tr. 10-11)

On the date of the accident, she was seen by the on-site paramedic. The on-site paramedic is present at each of the filming days. The on-site paramedic examined her in a private room, provided her with a heating pack and Advil, and sent her home. Petitioner had two days off, Friday and Monday after the injury which happened on Thursday. (Tr. 11-12)

Petitioner continued to work but did so with pain in her left shoulder until she saw dr. Nikhil Verma on November 19, 2019. She was referred by the on-site paramedic to see Dr. Nikhil Verma. Petitioner testified that in the 12 days between her accident and when she saw Dr. Verma, she was

continued to work her regular shift, sometimes leaving early and having other people covering some of her responsibilities. She was in pain all the time and was having problems lifting things. She worked 14 to 15 hours a day, some days she left early after 10 hours. (Tr. pp. 12-14)

On November 19, 2019, Petitioner was initially seen by Dr. Nikhil Verma at Midwest Orthopedics at Rush. On November 24, 2019, after reviewing the MRI of November 19, 2019 (PX 1, pp. 24-25), Dr. Verma referred her to Dr. Divya Agrawal for neck pain. (Tr. pp. 14-15). Petitioner said that she was thereafter discharged from care by Dr. Agrawal for the neck pain, he then referred her back to Dr. Verma. Petitioner testified she did undergo a cervical MRI and EMG/NCV. (Tr. pp. 14-17)

On August 31, 2020, Dr. Verma recommended surgery. On October 7, 2020, Dr. Verma gave her a cortisone injection. It was her last visit with Dr. Verma. (Tr. pp. 17-18).

Petitioner then transferred her care to Dr. Roger Chams. She was referred to Dr. Chams by Dr. Shaw, an orthopedic surgeon that was treating her at that time for left hip condition. She said that the left hip condition was not caused by the accident in this case. (Tr. 18-19)

Petitioner left Dr. Verma because she was not impressed by his bedside manner, and if she needed to undergo surgery that he recommended, she wanted a doctor she was more comfortable with. Petitioner indicated that during this period of time, she remained held off work by Dr. Chams. She said she was similarly held off work by Dr. Verma throughout his care. (Tr. pp. 18-19)

Petitioner said that she did have a prior left elbow injury that Dr. Chams believed may have been aggravated. Petitioner underwent two FCEs in February and April of 2022. Petitioner last saw Dr. Chams on April 19, 2022. (Tr. pp. 21-22)

Petitioner did not return to work for Respondent following her release from care with Dr. Chams. She is currently self-employed as a postpartum doula. (Tr. p. 22)

Petitioner testified that the documents contained in her Exhibit 4 are bills that remain outstanding. (Tr. 23) She similarly testified that all of the documents contained in her Exhibit 5 were out of pocket payments she made for medical care rendered as a result of the accident at issue in this case. (Tr. 25)

Petitioner said that her left shoulder still does not feel normal, as it continues to pop and grind. She also reported a decrease in strength. While she acknowledged having a full range of motion in her shoulder, she mentioned discomfort when raising her hands above her head. She described the pain as both sharp and dull during overhead activities. (Tr. 25-26)

On cross examination, Petitioner testified that she was in a motor vehicle accident approximately nine months before her work accident in this case. Petitioner was a passenger in a Lyft motor vehicle at that time and sustained a displaced fracture of the left humerus. She ultimately underwent surgery consisting of an open reduction and internal fixation for her left humerus fracture. Petitioner also injured her left hip, a torn labrum, as a result of that accident and continued

to treat for those injuries up to and after the November 7, 2019 accident in this case. (Tr. pp. 26-28)

Petitioner was a member of IATSE Local 476 as a makeup artist. Her work was project-based, lasting only for the duration of each show's filming. After completing one project, she would transition to the next, whether with the Respondent or another company. Throughout the day, she applied makeup, working on actors waiting for their turn to film the next scene while others were already in front of the camera. (Tr. pp. 30-33)

Petitioner last seen by Dr. Chams on April 19, 2022. She had not returned to see him because he would not see her until his outstanding bills were paid. (Tr. p. 35. The Arbitrator notes that over \$15,000.00 remain unpaid to Illinois Bone & Joint. (See Issue J, *infra*.)

She was recently seen by a new doctor, Dr. Sostak. Petitioner did not provide Dr. Sostak with the medical records of Dr. Chams or Dr. Verma and that she was not referred to Dr. Sostak by any other provider. (Tr. 34) Dr. Sostak had not recommended any injections, surgery, or any other treatment at that time. Rather, she stated that he initially wanted to perform injections, but after Petitioner told him she had already undergone the injections, he recommended that she not to undergo any additional injections. (Tr. p. 35)

Petitioner's attorney stipulated that Petitioner was claiming entitlement to temporary total disability benefits from December 13, 2019 to April 25, 2022. (Arb.X1, p.2, Tr. pp. 35-36, 39) Petitioner acknowledged that she understood that temporary total disability benefits were money paid to her for the periods of time when she was completely unable to work and did not in fact work due to her work injuries. Petitioner said that she did not work in any capacity from December 13, 2019 through April 25, 2022. (Tr. pp. 35-36) (Emphasis added) Petitioner stipulated on the record that she was paid TTD during that entire period of time and cashed the checks. (Tr. p. 39)

Petitioner said that CMS Makeup Art Inc. is an incorporated business she created for her personal business as a makeup artist. She was the sole employee of CMS Makeup Art, Inc. Petitioner said Respondent's Exhibit 10 was the yearly corporate filings she had submitted to the State of Illinois to maintain the corporate status of CMS Makeup Art, Inc. The filings listed her as both the agent and president. The documents showed she had annually filed these reports from the date of her accident through the most recent filing in April of 2024. (Tr. 41-42)

Petitioner said that in addition to the makeup work she did for shows and movies, she also did makeup work for weddings and events. One such client was Elliot Mandel and Bridget Skaggs. Petitioner admitted Respondent's Exhibit 11 was a copy of a check authored by Mr. Mandel and Ms. Skaggs payable to her corporation, CMS Makeup Art, Inc and dated July 24, 2020. Petitioner acknowledged that this check bore her signature on the back endorsing the same. The memo line indicated the check was for wedding makeup and that she, in fact, had done wedding makeup for Ms. Skaggs. Petitioner admitted that she performed this wedding makeup and was paid for the same during the periods when she claimed she was completely off work. (Tr. 42-43)

Petitioner was familiar with Pivot Point International. She did makeup work for them as well. Petitioner admitted Respondent's Exhibit 8 contained a copy of a contract for services she entered

into with Pivot Point International. The contract provided that she was to perform makeup work for a Pivot Point Fundamentals: Esthetics technical video shoot for five days of makeup work. According to the terms of this contract, she was to work between July 21, 2020 and July 28, 2020. Payment and makeup work was completed during the period she previously testified that she was off of work. Petitioner admitted that this document showed that she was paid for all the work performed and that she did in fact perform the work requested per the contract. (Tr. 43-45)

Petitioner acknowledged that Respondent's Exhibit 8 contained a second contract for makeup services she performed on the Pivot Point 100C Textured Hair fashion shoot. She signed the same on April 6, 2022. She was paid for the work performed that day and that she did perform the work per that contract. Petitioner admitted that this payment and makeup work was completed during the period she previously testified that she was completely off of work. (Tr. 46-47)

Petitioner testified that she was familiar with Columbia College and that she worked for them as an adjunct professor. Petitioner testified that she taught cinema makeup and had even written her own coursebook for the class. She received wages twice per month at Columbia College for her position as an adjunct professor for the period between December 13, 2019 through July 31, 2020. Petitioner admitted that she was paid for this work as an adjunct professor during the period she previously testified that she was completely off of work. (Tr. 48-50) Petitioner earned \$6,599.00 from Columbia College for a period of 33 weeks. (See infra)

Petitioner acknowledged that during the pendency of her case, she purchased a new home. She acknowledged that she obtained a mortgage to purchase the home and did not pay cash outright for the same. She could not remember what she wrote down as the source of her income when applying for a home mortgage. (Tr. 54)

Petitioner admitted that during the pendency of this case, she did receive acupuncture before coming under the care of Dr. Chams. The acupuncture was directed to the treatment in this case. . (Tr. 56)

Petitioner did not know what dates of service her out of pocket payments were credited for. Petitioner acknowledged that she received treatment at Illinois Bone & Joint Institute for personal conditions while also treating with this provider for conditions she was claiming to be related to the work accident. She was making these payments to pay down a significant outstanding balance. (Tr. 63-65)

MEDICAL EXHIBITS

Following the November 7, 2019 accident, Petitioner was first seen by Dr. Nikhil Verma on November 19, 2019, 12 days later. Petitioner reported a consistent mechanism of injury. Dr. Verma recorded in his letter to the workers' compensation claims adjuster that Petitioner was a 30-year-old female presenting for initial evaluation of left shoulder pain after a work injury on November 7, 2019, about 2 weeks prior. Dr. Verma submitted the letter to the adjuster as a work-related workers' compensation claim. Petitioner was working as a make-up artist for a TV show and was standing up on the set where a co-worker accidentally slipped and fell directly on her left shoulder. Petitioner reported that since that incident, she has had pain over the superior and

posterior aspects of the left shoulder with pain radiating into the left trapezius muscle and deltoid. In addition, Petitioner reported stiffness in the left shoulder.

At the November 19 visit, Petitioner also reported a history of a motor vehicle accident in February of 2019 wherein she broke her left distal humerus bone and required an open reduction and internal fixation of the distal humerus near the elbow. The surgery was performed by Dr. Arif Ali on February 18, 2019. (PX1 p.15, PX2, p.92). Dr. Verma recorded that Petitioner reported that she made a full recovery from this prior injury but was continuing to attend physical therapy. Dr. Verma also recorded that Petitioner said that her physical therapist had referred her for the shoulder as they did not want to continue therapy for the elbow due to Petitioner's ongoing shoulder pain. Petitioner reported some pain at night. (PX1 pg15).

Physical examination of the left shoulder revealed tenderness to palpation over the AC joint and bicipital groove. Petitioner had forward flexion in the left shoulder to 175 degrees compared to 180 degrees on the right with complaints of pain. Petitioner had bilateral external rotation to 85 degrees. Internal rotation on the left reached the lumbar spine while the right shoulder internal rotation was to the thoracic spine. Petitioner had a positive empty can test and 3+/5 rotator cuff strength on the left. Petitioner also had 3+/5 strength on the left with resisted forward flexion. Petitioner had a positive O'Brien's test, which would indicate labral pathology. Petitioner had a negative belly press test and bear hug test. Petitioner's neurologic examination was normal. (PX1)

Physical examination of the cervical spine revealed full range of motion, and no tenderness to palpation over the spine or paraspinal musculature. Petitioner did report tenderness to palpation over the left trapezius. X-rays of the left shoulder were taken and were normal except for evidence of the distal open reduction and internal fixation with screws and plates without evidence of migration, lucency, or fracture.

Dr. Verma diagnosed Petitioner with left shoulder pain that was possibly secondary to rotator cuff pathology due to the noted weakness and pain with rotator cuff testing. He opined that she sustained a work-related injury due to the co-worker falling directly on Petitioner's left shoulder. (PX 1, p. 16). Dr. Verma recommended an MRI of the left shoulder and discussed conservative management in the form of an AC joint injection. Petitioner was instructed to remain off of work until she could undergo the MRI. (Id.)

The Arbitrator notes that no medical records were introduced by either party regarding February 2019 motor vehicle accident.

Thereafter, Petitioner underwent an MRI without contrast of her left shoulder at Midwest Orthopedics at Rush on November 19, 2020. According to the reviewing radiologist, the MRI was completely unremarkable. Petitioner had an intact labrum and intact rotator cuff. A small fluid collection was noted in the superior subscapularis recess. (Id., p. 24)

Petitioner returned to see Dr. Verma six days later on November 25, 2019. It was noted that Petitioner had recently undergone an MRI of the left shoulder. Dr. Verma reviewed the MRI films and noted that the same was unremarkable without any evidence of a structural injury to the

shoulder. Petitioner was currently receiving physical therapy for her elbow ORIF. He noted the left trapezius pain with weakness and burning cervical pain radiating to the deltoid that is constant throughout the day was likely secondary to a cervical strain. Dr. Verma diagnosed Petitioner with a likely muscular strain of the left shoulder, and strain of the cervical spine. Petitioner was referred to Dr. Agarwal, a physical medicine and rehabilitation specialist, for conservative management of Petitioner's neck pain and left trapezius pain. Petitioner was to remain off of work until she could follow up with Dr. Agarwal. In the meantime, Petitioner was given a prescription for physical therapy two times per week for four weeks in order to focus on increasing her shoulder strength and range of motion. She was to return to see Dr. Verma on an as-needed basis. (Px 1, pp. 13-14).

Petitioner then presented to Dr. Divya Agarwal on January 7, 2020. Dr. Agarwal noted that he did not believe that Petitioner had any cervical pathology that was contributing to her condition. Dr. Agarwal therefore prescribed a trial of physical therapy that would focus on aggressive left rotator cuff strengthening, and myofascial work. (RX7)

Petitioner then returned to see Dr. Nikhil Verma on April 13, 2020. Petitioner was seen virtually due to the Covid epidemic. It was noted Petitioner was last seen by Dr. Verma in November but had since been seen by Dr. Agarwal. Petitioner reported that she had attended some physical therapy. Dr. Verma again noted that the previous MRI of the left shoulder had been unremarkable. Despite the physical therapy, Petitioner continued to complain of pain over the posterior aspect of her left shoulder and the posterior aspect of her neck. She also complained of numbness and tingling going down the left arm. She reported temporary benefit following physical therapy, but noted she was still symptomatic. Dr. Verma recommended Petitioner undergo a cervical spine MRI and an EMG/NCV as he was unsure as to the source of Petitioner's symptoms. He also recommended an evaluation by Dr. Singh, a spinal surgeon. Likewise, he recommended Petitioner remain off of work and continue to attend physical therapy. (PX1)

Petitioner underwent an EMG/NCV on June 15, 2020. The same was performed by Dr. Ryan Unger, a pain management specialist. He noted no evidence of cervical radiculopathy. (Id.)

On May 20, 2020, Petitioner underwent a cervical MRI without contrast ordered by Dr. Verma. The radiologist opined that Petitioner had a slight reversal of normal cervical lordosis. (Px 1, p. 23)

On May 27, 2020, Petitioner was seen by Dr. Kern Singh's physician's assistant, Christopher Mc Gee who noted that she was not represented by counsel. She complained of pain from her neck to left shoulder. She had 12 physical therapy visits and was taking aspirin as needed for pain. She was diagnosed with cervical muscular strain, prescribed physical therapy three/week for four weeks for the cervical strain, Mobic 15 mg, and restrictions per Dr. Verma., It was anticipated that would reach MMI for the neck after completion of physical therapy. (PX 1 pp. 9-10)

On June 15, 2020, Petitioner underwent an EMG/NCV at Concentra upon referral by Dr. Verma. Dr Unger opined that the electrodiagnostic study revealed evidence of a mild ulnar sensory neuropathy with demyelinating features, likely related to her previous humerus fracture and surgery. (Px. 1, p. 20)

On June 29, 2020, Petitioner was seen by Dr. Verma who noted that she was having persistent left shoulder pain at the posterior aspect of the shoulder and radiating from there and feels as though her shoulder is unstable. Petitioner had undergone an MRI of the cervical spine and an EMG which were both normal. Dr. Verma prescribed an Arthrogram. (Px 1, pp. 7-8).

On July 9, 2020 underwent an MRI Arthrogram of the left shoulder at Midwest Orthopedics at Rush upon referral of Dr. Verma. Dr. Meyer, the radiologist, opined that Petitioner had a probable small superior anterior labral tear from 10 to 1 o'clock along with AC joint osteoarthritis with trace amount of fluid in the subacromial/subdeltoid bursa. (Px 1, pp. 18-19).

Petitioner then returned to see Dr. Verma on July 13, 2020. Dr. Verma reviewed the MRI arthrogram which he believed showed evidence of a small superior anterior labral tear from the 10:00 to 1:00 position as well as mild AC joint arthritis. Dr. Verma noted Petitioner had undergone a significant trial of physical therapy but did not undergo the trigger point injections as she had been pending MRI review. Dr. Verma diagnosed Petitioner with a questionable superior labral tear in the setting of posterior shoulder pain and stiffness. Dr. Verma noted that this finding is common and often asymptomatic in the MRIs of adults her age. Dr. Verma recommended Petitioner continue conservative pain management in the form of trigger point injections to be performed by Dr. Madhu Singh and for dry needling physical therapy [*Dry needling is a modern Western medicine technique that treats muscle pain and trigger points*] for another four weeks. If Petitioner's symptoms persisted after the same, he would recommend a diagnostic arthroscopy with a possible labral debridement. In the meantime, Petitioner was to remain off of work. (Px 1, p. 10)

Petitioner returned to see Dr. Verma on August 31, 2020. Petitioner reported that the injection gave her mild relief immediately, but that the discomfort on the left side of her neck, trapezius, and at the top of her shoulder thereafter came right back. Dr. Verma recommended a left shoulder diagnostic arthroscopy with possible labral debridement and/or repair. It was noted that Petitioner was also being seen by Dr. Nho and was scheduled for a hip arthroscopy and hip labral repair in October. As such, Petitioner was to delay her shoulder surgery until she could recover from the hip. In the meantime, she would like to go forward with the intra-articular cortisone injection for the shoulder on October 7, 2020 prior to the surgery, Dr. Verma planned the left shoulder diagnostic arthroscopy end labral debridement repair in 12 weeks post hip surgery. She was instructed to schedule the cortisone injection for 10/07/2020. Petitioner was therefore instructed to remain off work (Px 1, pp. 3-4)

On October 7, 2020, Petitioner returned to see Dr. Verma on October 7, 2020 for the cortisone injection. It was noted that Petitioner had been recommended to undergo a diagnostic arthroscopy with a possible labral debridement and repair. However, Petitioner has been holding off on that surgery until after she underwent a hip surgery that was going to be performed at Illinois Bone & Joint Institute the following week. It was noted that Petitioner's hip surgery would require her to be on crutches and as such, it was not recommended she undergo the shoulder surgery prior to the same. Petitioner was to follow up in six to eight weeks to evaluate her progress following her hip surgery. Dr. Verma proceeded with intra-articular cortisone injection. Petitioner tolerated the procedure well. (Px 1, pp. 1-2)

Petitioner then transferred her care to Illinois Bone & Joint Institute and was seen by Dr. Chams on December 29, 2020. She sought to obtain a second opinion regarding Dr. Verma's shoulder surgery recommendation and because she was not happy with his bedside manner. Prior to being seen by Dr. Chams on that date, Petitioner filled out a medical history form. According to this form, the purpose of visit was left shoulder pain. She reported that Dr Verma had recommended surgery. She stated this was due to a work injury that occurred on November 7, 2019. She reported that she was currently off work due to the injury. Petitioner reported that she had undergone approximately four plus months of physical therapy and underwent trigger point injections, dry needling, and a cortisone shot. She also reported that she underwent an x-ray and an MRI with and without contrast as well as an EMG. Petitioner also reported that she had seen an acupuncturist for this condition. She brought her MRI CD and. (Px2 p. 89)

The Arbitrator notes that record submitted into evidence in this claim does not include the medical records relating to provider who administered acupuncture. The testimonial record does not disclose the name of the acupuncturist, nor the medical group of the acupuncturist nor the number of visits. The acupuncturist was not identified. Based on the evidence submitted at trial, it appears that the "acupuncturist" was the same medical provider who provided the dry needling prescribed by Dr. Verma. The Arbitrator is mindful that dry needling is a modern Western medicine technique that treats muscle pain and trigger points in an acupuncture like manner while acupuncture is an Eastern medicine technique that treats musculoskeletal pain and other systems of the body.

Petitioner then saw Dr. Chams on December 29, 2020. She reported that she was there for a second opinion regarding her left shoulder injury that occurred in November of 2019 and to discuss surgery. Petitioner provided a consistent history of her accident and provided a history of her medical treatment to date. (Px2) She did have scapular winging on the left. Petitioner did have a marked positive O'Brien test on the left. She also had a marked positive SPEED test on the left. Deltoid bursa test was positive on the left. She did have positive instability signs with inferior sulcus sign, anterior instability (supine and sitting load and shift), and posterior instability (supine and sitting load and shift). Petitioner had 4/5 strength with forward flexion, abduction, and external rotation with complaints of pain. Jobe's and external rotation strength were noted to be full on the left. Petitioner was diagnosed with left shoulder multidirectional instability. Surgery was recommended. Petitioner indicated a willingness to proceed with the same.

SURGERY: On January 13, 2021, Dr. Chams performed a left shoulder arthroscopic surgery with Bankart reconstruction and reverse Bankart reconstruction as well as a pancapsular plication. This was performed on January 13, 2021. Pre-operative diagnosis was a left shoulder Bankart tear and reverse Bankart tear, as well as multidirectional instability. Post-operative diagnosis was unchanged. Operative findings included a Bankart tear and a reverse Bankart tear, as well as multidirectional instability. (PX 2, pp. 49-52).

On January 27, 2021, Petitioner returned to see Physician's Assistant Molly Uyenischi post-operatively on January 27, 2021. It was noted that Petitioner was two weeks post-surgery. Petitioner was to begin physical therapy at Athletico in Printer's Row in Chicago. Petitioner's

sutures were removed. Petitioner was instructed to continue using her sling and to begin physical therapy. (PX 2, pp.43-44)

On January 27, 2021, Petitioner appeared for an initial physical therapy (PT) evaluation at Printers' Row Location of Athletico Physical Therapy upon referral from Dr. Chams. The therapist recorded that Petitioner was a 32-year-old female who presented post-surgery January 13, 2021 left labral repair with Bankart lesion repair. Impairments noted in left shoulder range of motion, left shoulder strength, and including pain levels which limit patient's tolerance to global upper extremity usage during all activities of daily living. Comorbidities of left shoulder dislocation as a teenager. The therapist recommended Petitioner receive physical therapy 3x/week for 18 weeks (PX 3, p. 6, p. 11).

On February 1, 2021, Petitioner appeared for physical therapy at Athletico stating that her left shoulder is healing pretty good today, but her left elbow is giving her more pain than her shoulder because of the sling. (PX3, p. 15)

Petitioner was seen by Dr. Chams' office in follow up on February 24, 2021, March 25, 2021, and May 20, 2021. During this period, Petitioner made improvements in range of motion, strength, and pain. Physical therapy was ordered, and Petitioner was to remain on restrictions. (PX2)

On March 24, 2021, the physical therapist at Athletico advised Dr. Chams of Petitioner's current status after 23 sessions with a working diagnosis of Acute pain of left shoulder, Muscle weakness Status post labral repair of shoulder. The therapist reported that Petitioner has made fair progress with physical therapy with improved active range of motion and passive range of motion with improved scapular activation and shoulder strength. Still severely limited in strength and ROM secondary to complex past medical history and history of left upper extremity surgery with lack of full recovery. No goals met at this time but overall positive progress being made with PT indicating continued PT is medically necessary to progress to prior level of function. (PX3, p. 55).

On May 7, 2021, the physical therapist at Athletico's Printers' Row recorded that after 39 sessions, Petitioner had made good progress with physical therapy as evidenced by increased shoulder active range of motion and strength. She is still limited with global upper extremity usage and is progressing well towards remaining functional goals. She will benefit from continued physical therapy at different facility as she is moving to a different town. She was discharged from the Printers' Row location. (PX3, pp. 97-98)

On May 20, 2021, upon referral from Dr. Chams, Petitioner was seen at Athletico located in St. Charles West. The therapist noted that she presented with complicated history of trauma having had multiple surgeries, most recently a left labral repair on 1/13/2021. She has improving weakness, but has severe weakness, left weaker than right. After completing the assessment, the physical therapist agreed with the Dr. Chams that Petitioner would benefit from skilled physical therapy for progression of therapeutic strengthening to allow for full restoration of functional activity tolerance and concluded that her rehabilitation potential was good. The therapist noted that she performed rehab, but ultimately had surgical repair 1/13/2021. She reports being immobilized x 6 weeks, then performing rehab at another Athletico location. She has recently moved near here and is going to resume physical therapy here. Currently, she complained of left

shoulder weakness, though right is weak too, she continued to complain of left neck tightness and bilateral scapular weakness. Separately, she suffered an MVA 2/2019 resulting in multiple fractures of L humerus requiring ORIF, left hip labral tear requiring surgical repair, and left foot fractures, as well as left clavicle fracture. She reports she can get numbness/tingling down the left arm and coldness into the 4th/5th fingers (especially while typing), all of which she is rehabbing elsewhere. She is right hand dominant. The therapist recommended additional with a frequency of 3 times per week for 12 weeks which was approved by Dr. Chams. (PX3, pp. 99-101).

On June 26, 2021, the physical therapist at Athletico St. Charles West opined that Petitioner t had progressed in physical therapy as they have achieved short term goals and was advancing towards long term goals. She has objectively improved their range of motion and strength measured with manual muscle testing. Additionally, she has improved their functional strength and movement capacity as they are able to increase exercise capacity since starting physical therapy. Petitioner was still limited in progression of FOTO score due to chronic nature of symptoms. Despite the improvement, Petitioner still had impairments in strength and range of motion, functional deficits, and limitations in participation. Due to the physical impairments and limitations in functional activities, skilled physical therapy with the management of physical therapist was medically necessary in order to accomplish goals and return to prior level of function. Rehab Potential: Excellent. The therapist recommended physical therapy frequency for 3 times per week for 4 weeks. (PX 3, pp. 125-127).

Respondent's Section 12 Examiner, Dr. Troy Karlsson (RX 4, RX 5, RX 6).

On July 2, 2021, Dr. Karlsson performed an examination and an AMA rating. (RX 4.) On February 10, 2023, Dr. Karlsson examined the Petitioner for a re-evaluation and conducted a second AMA rating. (RX 5) On July 23, 2024, generated an addendum report without conducting a physical examination. (RX 6).

First Section Dr. Karlsson 12 Examination (Rx 4) On July 2, 2021 Petitioner was then seen at Respondent's request for a Section 12 medical examination with Dr. Troy Karlsson. Dr. Karlsson recorded that Petitioner's subjective complaints were left shoulder weakness and stiffness. She also reported pain in the shoulder on the top, back, and front of the shoulder. She also said that she has clicking, popping, and grinding in the left shoulder, and lacked full range of motion. On examination, revealed a 20 cm [8.874 inches] scar over the posterior humerus involving the middle and distal thirds. Petitioner had upper arm symmetrical expected girth, 28.5 bilaterally, indicating no atrophy of the bilateral arms. However, girth measurement of the forearm is 24 on the right and 22.5 on the left. She also had well-healed arthroscopic scars in the left shoulder. Petitioner's left shoulder had no ecchymosis, atrophy, or deformity. She did have decreased range of motion with 170 degrees of flexion an abduction compared to 180 degrees on the right. External rotation was decreased to 60 degrees on the left compared to 80 degrees on the right. Internal rotation was to L3 on the left compared to T8 on the right. Forward elevation was noted to be to 170 degrees on the left versus 180 degrees on the right. Petitioner did have 1+ tenderness over the greater tuberosity but had negative impingement and labral testing. Strength testing revealed 4/5 strength on the left to all planes including all planes of the left shoulder, all planes of the left elbow, as well as with wrist flexion, extension, and grip. Petitioner reported no pain during this strength testing. (Id.) Dr. Karlsson noted that Petitioner's physical examination revealed some evidence of

symptom magnification. Specifically, he noted that Petitioner had 4/5 global strength throughout the entire left upper extremity, which indicated some volitional holding back in performance as there was no objective reason for this finding. He advised that there was no reason why a shoulder or humerus injury would cause grip weakness or weakness with wrist flexion and extension, elbow flexion and extension, and all motion to the shoulder. (Id.) The Arbitrator notes that Dr. Karlsson failed to address or overlooked that Petitioner's cervical pathology and positive EMG/NCV and, thus, did not discuss how these factors might negated symptom magnification. With respect to causation, Dr. Karlsson found that Petitioner's labral tears were causally related to the accident. He also opined that the surgery was medically necessary, and that the surgery was causally related to our accident. He opined that although this condition was causally related to the accident, Petitioner had reached maximum medical improvement as she was six months removed from her surgery. He indicated that Petitioner was currently capable of working without restrictions and could return to work. (Id.)

On July 8, 2021, Petitioner was seen by Dr. Chams who noted that Petitioner's strength and pain complaints were progressing well. She reported left elbow pain. On physical examination, Petitioner had symmetric range of motion in her bilateral shoulder except approximately 5 degrees of lost internal rotation on the left. She had a positive impingement 1 and 2 test on the left. She had decreased strength to all planes of the left shoulder except internal rotation. Physical therapy was recommended. (PX2)

On August 27, 2021, the physical therapist informed Dr. Chams that after 24 sessions at the St. Charles West location, Petitioner progressed well in physical therapy as they have achieved short term goals and is advancing towards long term goals. She has objectively improved their range of motion and strength measured with manual muscle testing. Additionally, she has improved her functional strength and movement capacity as they are able to perform ADLs with augmented tolerance. She has improved FOTO score to 62, which is 7points greater than initial visit. Despite the improvement, patient still has impairments in strength and range of, functional deficits, and limitations in participation. Due to the physical impairments and limitations in functional activities, skilled physical therapy with the management of physical therapist is medically necessary in order to accomplish goals and return to prior level of function. Rehab Potential: Excellent. Petitioner reported that she went to the doctor on 8/17/21 and was instructed to continue with physical therapy. She says that she received a cortisone injection in the left elbow which has helped with her symptoms. She has not been as consistent with home exercises due to life events such as a recent death in the family. She has pain still with reaching overhead and behind back. The therapist opined that by 9/29/21 patient will be lift greater than 5 lbs. from waist to overhead in order to improve reaching and lifting capacity for ADLs. The therapist recommended if physician agrees, continue with skilled physical therapy 2 times per week for 6 weeks to progress toward functional goals and resolve remaining impairments. (PX 3, pp. 154-156)

Petitioner then continued under the care of Dr. Chams from February 24, 2021 through December 20, 2021 at which time the physician's assistant ordered Petitioner to undergo a three-week work conditioning program. During this period of time, Petitioner had been continually authorized off of work. (PX. 2, p. 17).

On February 7, 2022 Petitioner was again seen by Dr. Chams. Petitioner was 13 months post-operative. Petitioner reported ongoing difficulty, pain, and tightness in the shoulder despite work conditioning. An FCE and additional physical therapy were recommended. (PX 2, p.14)

Petitioner underwent an FCE at Athletico Physical Therapy on February 21, 2022. The therapist recorded the following history:

“Client is right hand dominant Hairstylist and Makeup Artist for TV/movie production who reports injuring her left shoulder on 11/7/2019. She reports she was sitting in a camping-type of chair when another employee tripped on her chair knocking over the client in her chair and then falling on top of her. The ‘co worker’ reportedly fell on top of the client's left side and shoulder. The client reportedly had immediate, severe pain in the left shoulder. She was first seen onset by an EMT employed by the TV production company. She was given a hot compress and was sent home. Her supervisor was aware and she was told to take the weekend off. She returned to work the following Monday, 4 days later, with continued pain. She was referred to a Dr. at Rush, Dr. Verma by a co worker. She saw Dr. Verma later that week. She had an MRI which was normal and she returned to work (although the doctor had written her off work unbeknownst to the client). She was working with severe pain for two weeks until work comp reached out to her and asked how she was doing and told her she was supposed to be off from work. She last worked on 12/13/2019. She then returned to see Dr. Verma in early January, and he ordered PT. She had therapy at IMPACT in Chicago without improvement from January to May therefore an arthrogram was ordered. Again, the MRI was clear and more therapy was ordered until August 2020. At that time, work comp reportedly denied further care. Dr. Verma recommended a diagnostic arthroscopy. He gave her a cortisone injection. Surgery was denied by WC and an IME was ordered. Simultaneously she was having hip issues from a previous car accident on 2/15/19. She had a labral debridement on her left hip 10/16/20 and ended up having the shoulder IME at the end of Nov. 2020. IME did not support further care. She continued to have significant shoulder pain, therefore, got an attorney and changed doctors to see Dr. Chams who agreed that a diagnostic arthroscopy should be done. Surgery was performed on 1/13/21 and client was found to have a Bankart and reverse Bankart tear with a glenoid fracture as well. She had a labral repair. She had postoperative therapy at Athletico in printers row and then transferred her care to St. Charles West in May of 2021. Therapy went fairly well, however a previous left elbow injury (distal humerus fracture) resulted in stiffness and distal bicep discomfort and a elbow cortisone injection in August 2021. She was eventually discharged from therapy on 12/17/21, after 49 visits, and last saw her surgeon on 12/20/21 at which time he gave her a cortisone injection in the left shoulder and ordered work conditioning for 3x/wk for 3 weeks. She reports that she completed the work conditioning (10 total visits), but really struggled - states that she was in a lot of pain, and the pain only got worse as she continued. States that she has not had any PT since she completed work conditioning on 1/27/22 - and she feel like she is back at the baseline that she was prior to work conditioning which was still quite painful. States that she saw her Dr.(actually his assistant) in early February, and he recommended an FCE.” (Px2, p.63).

The therapist found that Petitioner’s FCE was invalid due to inconsistent performance on the part of petitioner. Petitioner demonstrated the ability to work in the light to medium physical demand

level; however, the therapist emphasized that this was not Petitioner's true function or restriction. (Px2. pp. 61-67)

Following the failed FCE, Petitioner returned to see Dr. Chams on February 28, 2022. Dr. Chams noted Petitioner failed the recent FCE due to her inconsistent performance. Dr. Chams recommended more physical therapy followed by a second FCE. (PX 2, p. 11)

On April 14, 2022, Petitioner underwent a Functional Capacity Assessment at ATI. The FCA was performed by Tom Werner, an Assessment Specialist. According to Mr. Werner, Petitioner's FCA was valid. She reportedly tested into the light physical demand level. He opined that Petitioner was capable of performing her work duties up to an 8-hour workday. It was noted that petitioner's occupation was that of an on-set makeup artist, but a job description was never received. Rather, Petitioner provided a job description that required her to stand, walk, crouch, bend, stoop, twist, reach, and work with her arms extended for prolonged periods of time, lifting, and carrying make-up bags, chair and personal bags together. (Px2. p.1)

Petitioner demonstrated the capability to lift 23.6 pounds above the shoulder for 8-plus hours a day, lift 41.2 pounds from desk to chair without any limitations, lift 32.4 pounds without any duration limitations, and carry 37 pounds bilaterally without any limitations. It was noted that during the testing, Petitioner reported pain in the left shoulder and left scapular area with pinching in the left side of the neck. Petitioner also reported fatigue in the left shoulder. (Id.)

The April 2022 FCA results showed that Petitioner's heart rate prior to testing was 76. During testing above shoulder was at 102, chair to floor 102, and stairs 102. Petitioner's heart rate for desk/chair lift was 96, carrying 96 and push pull at 84. Review of Petitioner's strength testing showed that her heart rate never rose above 102. (Px 2, p.58)

Dr. Karlsson noted in his July 22, 2024 addendum report that following the second FCE, Petitioner returned to see Dr. Chams on April 19, 2022. Dr. Chams noted that Petitioner was 16 months post Bankart repair versus Bankart reconstruction. Petitioner was reporting that her left shoulder was doing okay. It was noted that she had previously undergone an FCE and was there to review the results. Petitioner was still complaining of some pain in the trapezius and parascapular region. (RX 6, p.2) On physical examination, Dr. Chams noted Petitioner's shoulder had full and symmetric range of motion in the bilateral shoulders to all planes. Provocative testing was all negative. Rotator cuff testing did reveal a positive Neer impingement and Hawkin's impingement on the left but was otherwise negative in the bilateral shoulders. Petitioner's motor strength was noted to have 4+/5 forward flexion and Jobe's on the left but was otherwise full. Petitioner was released at maximum medical improvement. (RX 6, p.2)

Dr. Chams released Petitioner to return to work full duties as of April 25, 2022 with the limitation of an 8-hour workday. He further opined that she had reached maximum medical improvement. (PX 2, p. 4).

Second Dr. Karlsson Section 12 Examination. On February 10, 2023, Petitioner was then seen at Respondent's Request for a second Section 12 examination with Dr. Troy Karlsson. Petitioner denied any new injuries since his last examination. Petitioner reported that she attended physical therapy until April of 2022 when she underwent the functional capacity evaluation. Petitioner could not recall whether she was placed on any permanent restrictions following the FCE. During examination, Petitioner reported ongoing pain in the left shoulder over the front of the shoulder at

a 6/10 at its worst and 3/10 at its best. Petitioner denied any ongoing instability of the shoulder since the surgery but felt as though her arms were different lengths. Petitioner stated that the accident has ruined her life, and she has to adjust her arm for activities. She indicated she was currently doing yoga, but if she has to do any movements that places both of her arms on the ground, she has to put some lifts under her left arm. She also reported some grinding and clicking during motion of the left shoulder. She also reported a feeling of tightness. Petitioner denied that she was currently working. Dr. Karlsson then performed physical examination of Petitioner. Girth measurements were taken, and Petitioner was noted to have 29 cm of girth between in the upper arm on the right compared to 28.5 on the left. Range of motion testing exhibited symmetrical range of motion without any crepitus in the bilateral shoulders with the exception of internal rotation, which was to T8 compared to T10. Petitioner reported some tenderness in the AC joint, in greater tuberosity. She had full strength in the bilateral upper extremities. Dr. Karlsson reviewed the physical therapy notes from Athletico, as well as the FCE from February 21, 2022. With respect to the FCE, he noted Petitioner was found to have an invalid/inconsistent performance and that the evaluator could not accurately identify her true function or restrictions. Petitioner's effort was determined to be invalid and inconsistent due to grip strength testing that was not reproducible, subjective complaints that were disproportionate with the objective findings, and subjective complaints that did not correlate with observed functional movement patterns. He noted the examiner found that Petitioner displayed exaggerated pain behaviors as well as kinesio-physical signs that were absent in the preponderance of the tasks that were indicative of Petitioner performing less than maximum effort. Further, it was noted petitioner's heart rate did not increase 25% over resting during the majority of her tasks. After examining Petitioner and reviewing the medical records, Dr. Karlsson opined that Petitioner had subjective complaints beyond any objective findings. He noted Petitioner had stable shoulder with full range of motion yet continued to complain of tenderness over the entire shoulder girdle with pain throughout range of motion. He noted Petitioner's surgery was successful and that there was no objective reason for Petitioner's subjective complaints of pain and dysfunction. Dr. Karlsson noted Petitioner had a diagnosis of ligamentous laxity and Bankart lesion, but that Petitioner has been exhibiting signs of symptom magnification. He noted that the original injury of November 7, 2019 did lead to her need for care and surgical treatment, but he did not believe there was any objective problem with her left shoulder at that time. Dr. Karlsson did not believe Petitioner required any care whatsoever subsequent to his July of 2021 examination as she was at maximum medical improvement at that time. He did not believe any of the care Petitioner has received since then has been reasonable, necessary, or causally related to the accident. He noted Petitioner was capable of working full activities with no restrictions regarding her left shoulder.

IMPAIRMENT RATING: Dr. Karlsson performed an impairment rating and found a zero (0) percent impairment.

Dr Karlsson's Addendum Report. Thereafter, Dr. Karlsson authored an addendum report at Respondent's request dated July 22, 2024. In anticipation of the same Dr. Karlsson reviewed the April 14, 2022 FCE (sic., FCA) and the 4/19/22 report from Dr. Chams. Dr. Karlsson noted that the FCE was not credible in light of the fact that the same was performed by an athletic trainer rather than a physical therapist, that Petitioner's heart rate never rose above resting, and as her grip strength testing did not demonstrate a bell-shaped curve. Dr. Karlsson did not provide any

documentation to support his allegation nor did Respondent. Dr. Karlsson continued to believe Petitioner was capable of full duty work with no time restraints. (Rx6)

III. CONCLUSIONS OF LAW

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

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

Credibility Finding: Petitioner testified in open hearing before the Arbitrator who had opportunity to view Petitioner's demeanor under direct examination, and under cross-examination. The Arbitrator finds her to be credible. The Arbitrator finds the Petitioner demeanor to be sincere, a judgement supported by a consistency of her testimony that corroborated by the stipulated facts, the medical records, and the record as a whole. The Arbitrator notes that any inconsistencies in Petitioner's testimony were due to a misunderstanding and miscommunication rather than an intent to deceive or for secondary gain. The Arbitrator notes that Petitioner answered questions on direct and cross examination directly, stoically, without any hesitation or evasiveness.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (F) WHETHER PETITIONER'S CURRENT CONDITION OF ILL-BEING IS CAUSALLY RELATED TO THE INJURY, THE ARBITRATOR FINDS AS FOLLOWS:

It is well-settled that an employee need only show that some act of employment was a causative factor, not the sole or principal cause, of his injury. *Alderson v. Select Beverage, Inc.*, 06 I.W.C.C. 0095, 01 W.C. 33435 (2006). "Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury." *Duntelman v. Illinois Workers' Comp. Comm'n*, 2016 IL

App (4th) 150543WC, ¶ 42. The fact that the employee had a preexisting condition, even though the same result may not have occurred had the employee been in normal health, does not preclude a finding that the employment was a causative factor. *Id.* The question is whether the evidence supports an inference that the accident aggravated or accelerated the process which led to the employee's current condition of ill-being. *Id.* A work-related injury "need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Id.* ¶ 43. In determining causal connection, the Appellate Court of Illinois has held that inferences cannot reasonably be drawn from matters of "speculation, surmise, and conjecture." *First Cash Financial Services v. Industrial Commission*, 367 Ill.App.102 (2006).

A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839 (1994). 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 (2000).

There was no evidence of health problems related to Petitioner's shoulder prior to the date of injury. Based upon the record as a whole, it appears that Petitioner's was in otherwise good health and without symptoms to her shoulder until she suffered a blunt force trauma at work on November 7, 2019. The shoulder pain was documented to be a new problem and was a consistent problem throughout Petitioner's medical treatment related to her shoulder. There was no evidence of other factors or pre-existing conditions that were symptomatic. Aside from the November 7, 2019, no other explanation or intervening injury was presented to account for her current condition of ill-being to her shoulder. Accordingly, the Arbitrator finds that Petitioner has proven by the chain of events and by a preponderance of the evidence that, as a result of the accidental injury sustained on November 7, 2019, she suffered an injury ultimately diagnosed as:

It appears that Respondent agrees that Petitioner sustained a torn labrum in her left shoulder as a result of the accident on November 7, 2019 that necessitated surgical intervention. Dr Karlsson does agree. While Petitioner underwent and ongoing treatment until April 25, 2022, Respondent alleges that Petitioner's complaints subsequent to July 2, 2021 are not causally related to the November 7, 2019 accident. For the reasons set forth below, the Arbitrator finds that Petitioner sustained a compensable accident that caused a left shoulder labral tear that resolved by April 25, 2022. The Arbitrator further finds that Petitioner's complaints subsequent to July 2, 2021 and her current condition of ill-being are causally related to the November 7, 2019 accident.

An injury arises out of the employment where it originates from a risk connected with, or incidental to, the employment so as to establish a causal connection between the injury and the employment. *Efremidis v. Indus. Comm'n*, 308 Ill. App. 3d 415(1999). An employee must prove causal connection by evidence from which inferences can fairly and reasonably be drawn. *Caterpillar Tractor Co v. Industrial Commission*, 83 Ill.2d 213 (1980). In determining causal connection, the Appellate Court of Illinois has held that inferences cannot reasonably be drawn from matters of "speculation, surmise, and conjecture." *First Cash Financial Services v. Industrial Commission*, 367 Ill.App.102 (2006).

It is undisputed by the parties that Petitioner sustained a torn labrum in her left shoulder as a result of the November 7, 2019 work accident. Therefore, the primary issue with respect to causation turns upon whether or not Petitioner's ongoing left shoulder complaints are related to the stipulated work accident. The Arbitrator finds these complaints are related to the work accident. The Arbitrator is not persuaded by the opinions of Respondent's Section 12 medical examiner, Dr. Troy Karlsson, and finds him unconvincing on this issue.

With respect to causation, Dr. Karlsson found that Petitioner's labral tears were causally related to the accident. He also opined that the surgery was medically necessary to perform, and that the surgery was causally related to Petitioner's work accident.

The Arbitrator notes Dr. Troy Karlsson was afforded the opportunity to review Petitioner's post-accident medical records and examine Petitioner in connection with this claim. And, yet the Arbitrator finds that he failed to fairly use them to render persuasive opinions. The Arbitrator affords little weight to Dr. Karlsson's opinions. "Expert opinions must be supported by facts and are only as valid as the facts underlying them. Quoting *In re Joseph S.*, 339 Ill. App. 3d 599, 607 (2003)." *Gross v. Illinois Workers' Compensation Commission*, 2011 IL App (4th) 100615WC, P24. As such, the Arbitrator affords little weight to the opinion of Dr. Karlsson because Dr. Karlsson failed to persuasively address the interplay of the prior injury with the work-related injury. He simply concluded that her serious left arm injury would not contribute her to her functional impairments; a conclusion that fails comport with the adduced facts.

Specifically, during his July 2, 2021 examination, Dr. Karlsson noted that Petitioner's diagnosis of a labral tear, repaired with surgery, would not result in petitioner's complaints of pain and tenderness throughout the entire left arm. He noted that Petitioner's injuries similarly would not account for Petitioner's finding of decreased strength to all planes of the left arm including grip strength and wrist strength. Dr. Karlsson stated that the only explanation for these findings would be that Petitioner was deliberately holding back on her performance during examination. The Arbitrator agrees. She was engaged in guarding, fearing of exacerbating her neck, arm fracture, operated shoulder and operated hip. of ill-being. The Arbitration is not persuaded by Dr. Karlsson's opinion. Regrettably, Dr. Karlsson failed to persuasively address how the injuries which Petitioner sustained as a passenger in the Lyft vehicle contributed to her current complaints, and then inappropriately concluded that she was engaged in symptom magnification. The Arbitrator notes that neither Dr. Verma nor Dr. Chams found evidence of symptom magnification. Nor did the physical therapist indicate Petitioner engaged in symptom magnification. As to the findings contained in the Athletico FCE the Arbitrator finds that Petitioner's effort was more consistent with guarding than symptom magnification or malingering.

Additionally, the Arbitrator notes that Dr. Karlsson's findings from July 2, 2021 are inconsistent with the objective assessments made by the Athletico therapist on June 26, 2021, as well as Dr. Chams' findings from July 8, 2021, which indicated impingement tests 1 and 2 on the left side, along with decreased strength in all movements of the left shoulder except for internal rotation. Unlike Dr. Karlsson, both Dr. Chams and the Athletico therapist recommended physical therapy. The Arbitrator concludes that the findings of the therapist and Dr. Chams are more aligned with the evidence than those of Dr. Karlsson.

On February 21, 2022, during Petitioner's Functional Capacity Evaluation (FCE) at Athletico Physical Therapy on February 21, 2022, the therapist determined that the FCE was invalid due to Petitioner's inconsistent performance. The therapist stressed that, because of Petitioner's questionable effort, the FCE could not be regarded as a reliable assessment of her true capabilities or limitations. The Arbitrator observes that the therapist did not convincingly address Petitioner's guardedness—given her left arm fracture with hardware, left shoulder surgery, cervical strain, and hip surgery—contributed to her lack of full effort. The Arbitrator believes that Petitioner was not malingering or trying to mislead the therapist but was rather cautious about the risk of reinjury.

On April 14, 2022, the Arbitrator notes that while Petitioner did undergo a Functional Capacity Assessment (FCA) that was found to be valid on April 14, 2022. The ATI assessment specialist noted that Petitioner's occupational job duties were the light physical demand level and that the results of the assessment demonstrated that she was capable of working at the light physical demand level but limited to an 8-hour workday. The April 2022 FCA results showed that Petitioner's heart rate prior to testing was 76. During testing above shoulder was at 102, chair to floor 102, and stairs 102. (Rx. 2, pp. 53, 58)

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (J) WHETHER 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; AND, IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO ISSUE (O) WHETHER PETITIONER EXCEED HER TWO CHOICES OF PROVIDERS, THE ARBITRATOR FINDS AS FOLLOWS:

The claimant bears the burden of proving, by a preponderance of the evidence, his or her entitlement to an award of medical care under section 8(a). *Westin Hotel v. Industrial Comm'n.*, 372 Ill. App. 3d 527, 546 (2007). The Workers' Compensation Act requires the employer to provide all "necessary first aid, medical and surgical services...reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a). Subject to the requirement that medical expenses be necessary and reasonably required to cure or relieve the effect of the accidental injury, section 8(a) of the Act requires an employer to pay for all medical, surgical, and hospital expenses arising out of services performed by the physician, surgeon, or hospital initially chosen by the employee, or those to which the employee was referred by the initial provider, plus "all medical, surgical and hospital services provided by any second physician, surgeon or hospital subsequently chosen by the employee or by any other physician, consultant, expert, institution or other provider of services recommended by said second service provider or any subsequent provider of medical services in the chain of referrals from said second service provider. Thereafter, the employer shall select and pay for all necessary medical, surgical and hospital treatment and the employee may not select a provider of medical services at the employer's expense unless the employer agrees to such selection. *At any time the employee may obtain any medical treatment he desires at his own expense.* This paragraph shall not affect the duty to pay for rehabilitation referred to above." (Emphasis added.) 820 ILCS 305/8(a)(3) (West 1994).

The Act provides that an injured worker is entitled to two choices of physicians and any other medical provider in the chain of referrals from those two physicians. *Id.* The determination as to whether a claimant obtained medical treatment as a result of a valid referral is a question of fact

for the Commission to determine. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 468 (4th Dist. 2011)

Respondent raised a defense based on the two-physician rule at the beginning of the trial, rather than including it in the request for a hearing form (Arb.X 1, Tr. p.3). The Respondent claims that all care provided to the Petitioner after December 28, 2020, fell outside the referral chain, as this date was the day before the Petitioner saw Dr. Chams. The Respondent contends that the Petitioner's first choice was Dr. Verma, followed by an unnamed acupuncturist as her second choice. Thus, the Respondent argues that the Petitioner's treatment with Dr. Chams violated the two-physician rule. However, the Arbitrator finds that the evidence submitted does not support the Respondent's claim.

Petitioner testified that her employer's in-house paramedic referred her to Dr. Verma. However, Dr. Verma's initial office visit notes indicate that she was referred by an unidentified physical therapist. The Arbitrator deems the Petitioner's testimony regarding the referral credible and consistent with the presented facts and inferences. The paramedic's records were not submitted as evidence and could have either supported or contradicted her account. Ultimately, the Arbitrator concludes that it is more likely the paramedic referred Petitioner to Dr. Verma, as it would make more sense for a therapist treating her left arm fracture to direct her to the orthopedic surgeon managing her arm injury for shoulder treatment. Moreover, the Athletico FCE therapist recorded that Petitioner was referred to Dr. Verma by a "co worker" which aligns more closely with Petitioner's testimony than that of Dr. Verma's notes. (Px 2, p.63)

Petitioner testified that before seeing Dr. Chams, she received acupuncture therapy. The name of the acupuncturist was not obtained during direct or cross examination. At first blush, it appeared that Petitioner exercised a choice of medical providers when she received acupuncture. However, the medical records of Dr. Verma clarified the discrepancy. Dr. Verma's progress notes reflect that he referred Petitioner to Dr. Madhu Singh for injections and for dry needling therapy. Dry needling is a Western medicine form of acupuncture. Accordingly, the Arbitrator finds that the "acupuncture" treatment was on referral from Dr. Verma, and not a first or second choice of medical providers.

Accordingly, the Arbitrator finds that review of the testimonial and medical evidence reveals that Dr. Chams was Petitioner's first choice and Dr. Sostak was her second choice. At trial, Petitioner testified that she is now treating for her left shoulder at Fox Valley Orthopedics with Dr. Sostak. Petitioner did not testify as to any referrals she received to see Dr. Sostak. Dr. Sostak is therefore Petitioner's second choice of physician.

Additionally, the Arbitrator recognizes that the two-physician limitation in §8(a)(2)(3) is intended to prevent physician shopping. In this case, the uncontested testimony from the Petitioner indicates that Dr. Chams' office denied her the opportunity to see Dr. Chams because of significant unpaid medical bills. Moreover, when Dr. Verma recommended surgery, it was reasonable for Petitioner to obtain a second opinion. Obtaining second opinion on a surgical recommendation is reasonable and not doctor shopping.

Assuming for the sake of argument that Dr. Verma was the Petitioner's first choice of physician, Dr. Chams her second, and Dr. Sostak her third, this distinction is irrelevant to the determination

of the Petitioner's entitlement to payment for the treatment bills and records of Dr. Sostak that were not submitted as evidence.

Having found that Petitioners' current condition of ill-being to her left shoulder is causally related to her work accident, the Arbitrator noted that Dr. Verma and Dr. Chams opined that surgery was necessary to cure and relieve the left shoulder tear. Dr. Karlsson also opined that the surgery was medically necessary, and that the surgery was causally related to her work accident. The Arbitrator was not persuaded by Dr. Karlsson opinion that Petitioner had reached maximum medical improvement at the time of his July 2, 2021 Section 12 examination. The Arbitrator finds that findings and opinions of Dr. Karlsson were inconsistent the findings of the physical therapist, Dr. Chams and Petitioner's credible testimony.

Petitioner submitted the following bills into evidence, testifying that they all pertain to treatment for her left shoulder work injury and are not associated with any unrelated medical conditions:

1. Hawthorne Surgical Center in the amount of \$24,441.00 for the 1/13/2021 shoulder surgery.
2. Illinois Bone & Joint, February 18, 2019 through July 8, 2021, in the amount of \$14,009.50.
3. Illinois Bone & Joint Institute, August 17, 2021 through April 19, 2022, in the amount of \$1,005.00.
4. Athletico in the amount of \$16,979.00.

The total amount of bills awarded is \$56,434.50, to be paid pursuant to the Medical Fee Schedule and in accordance with Sections 8(a) and 8.2 of the Act. By an agreement of the parties, Respondent is entitled to credit for medical bills previously paid. Petitioner proved that these expenses were incurred in compliance with the two-physician limitation of §8(a)(2)(3) of the Act and proved by a preponderance of the evidence that the treatment was reasonable and necessary, and, therefore, recovery of said is expenses is awarded.

The bill from Hawthorne Surgical Center was for surgery Petitioner underwent on January 13, 2021. Having already found that surgery to be causally related to Petitioner's work accident and not in violation of the two-doctor rule, the Arbitrator awards that bill to Petitioner.

With respect to the two bills from Illinois Bone & Joint Institute, the Arbitrator awards those bills only for the following dates of service: December 29, 2020, January 13, 2021, January 14, 2021, January 27, 2021, February 24, 2021, March 25, 2021, May 20, 2021, July 8, 2021, August 17, 2021, October 26, 2021, February 7, 2022, February 28, 2022 and April 19, 2022. Those dates of service reflect treatment Petitioner received for her left shoulder and incurred in compliance with the two-doctor rule.

With respect to the bill from Athletico, the Arbitrator also awards this bill to Petitioner. The unpaid charges from July 7, 2021 through March 29, 2022 are all for physical therapy Petitioner received for her left shoulder.

With respect to Petitioner's out of pocket expenses of \$1,625.97, the Arbitrator notes that all of these expenses were related to treatment Petitioner received for her left shoulder. This is based on Petitioner's testimony and the medical records. The Arbitrator awards to Petitioner all of her out of pocket expenses.

In conclusion Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical treatment for her right shoulder in the amount of \$24,441.00 to Hawthorn Surgical Center; \$14,009.50 to Illinois Bone & Joint, \$1,005.90 to Illinois Bone & Joint Institute; and \$16,979.00, pursuant to the Medical Fee Schedule and Sections 8(a) and 8.2 of the Act and pay Petitioner's out of pocket medical expenses of \$1,625.97. Respondent is entitled to credit for bills previously paid. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (K) WHAT TEMPORARY TOTAL BENEFITS ARE DUE, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner alleges entitlement to 123-3/7 weeks of temporary total disability (TTD) benefits for the period of time from December 13, 2019 through April 25, 2022. The Arbitrator finds that Petitioner is entitled to TTD from December 14, 2019 through April 24, 2022, representing 123-2/7th weeks. The medical records of Dr. Verma, (Px. 1), and Dr. Chams, (Px. 2), fully support this period of lost time claimed by Petitioner.

In order to recover temporary total disability benefits under the Act, a claimant must prove that she did not work and that she was unable to work due to sustaining a work-related injury. *Arbuckle v. Industrial Commission*, 32 Ill. 2d 581, 586 (1965). Petitioner bears the burden of proving both elements to receive entitlement to temporary total disability benefits. Although Petitioner was employed during this period, she was earning substantially less than she would have earned had she been working her regular job. The case law in Illinois is quite clear that "evidence that the employee has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability period." *E.R. Moore, Company vs. Industrial Commission*, 71 Ill.2nd 353 (1978). Here, Petitioner's side jobs were during the period when her condition of ill-being has not stabilized. The presented evidence revealed that Petitioner was employed by Columbia College as an adjunct professor before and after her work accident of November 7, 2019. The records from Columbia College reflect Petitioner was employed there from September 2016 through July 2020.

With respect to the first pivotal issue, in *J.M. Jones Co. v. Industrial Commission* (1978), 71 Ill. 2d 368, the testimony showed the claimant, in addition to his employment with the employer as a warehouse worker, also drove a school bus for approximately three hours each day. Although he was no longer working for the employer, he continued to drive the bus for approximately seven months after the injury. The employer argued that because the claimant was employed part time as a bus driver, he was not entitled to TTD benefits. The Supreme Court cited *E.R. Moore v. Industrial Commission* (1978), 71 Ill. 2d 353, in which it was stated: "Evidence that the employee has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability. " (Id. at 361). The Supreme Court determined the claimant, for some period of time following his injury, could drive a school bus for a one and one fourth hour period each morning and afternoon and that was not sufficient to reverse the Commission's finding he was entitled to TTD payments. Apparently, the fact that the claimant performed both his primary job and a part-time second job, prior to the accident, was

a factor in allowing the claimant to collect TTD while continuing to perform his second job. There was no basis for the claimant to leave his second job in order to continue receiving TTD benefits.

The same result was reached in *Zenith v. Industrial Commission* (1982), 91 Ill. 2d 278, where the claimant testified he sold hot dogs from a truck he had owned even before the injury. The Supreme Court determined that even if the claimant working a few hours each day from his hot dog truck with his family does not bar his receiving TTD benefits. Thus, in respect to the first pivotal issue, the court determined a claimant is not barred from receiving TTD benefits for his inability to perform his primary job even though he is employed at, and able to perform, a second job.

The Arbitrator finds that Petitioner's employment at Columbia College falls within the permissible guidelines stated by the Illinois Supreme Court in *J.M Jones Co* and *Zenith*.

With respect to the second pivotal issue, implicit in the above cases is a determination a claimant can continue to receive TTD benefits if the second job is part time and results in occasional wages. The Court determines that, as a matter of law, a claimant is precluded from receiving TTD benefits if the second job either involves more than part-time work or the remuneration is substantial. Here, the evidence clearly establishes that Petitioner's side jobs were not more than part-time work and the remuneration was not substantial.

In evaluating Petitioner's entitlement to TTD, the Arbitrator notes and is mindful that Respondent issued TTD checks in the amount of \$1,529.84 on a weekly basis from December 20, 2019 through December 17, 2020. And, then issued no TTD checks for approximately four (4) months from December 18, 2020 through April 12, 2021. On April 13, 2021, Respondent issued a check the amount of \$8,366.90. Respondent then issued a check in the amount of \$42, 855.52 on July 23, 2021. And the last TTD payment of August 19, 2021 in the amount of \$1,529.84.

The Arbitrator notes that the last two payments were made after Petitioner was examined Dr. Troy Karlsson, on July 1, 2021. Although payment of benefits is not an admission of liability, the Arbitrator is mindful that payments were made after the July 1, 2021 Dr. Karlsson examination and after careful consideration before issuing \$42,855.22 and \$1,529.84 in less than one month. Clearly, Respondent would issue checks the amount of \$8,366.90, \$42, 855.52 on July 23, 2021 and \$1,529.84 for a total of \$52, 752.26. These payments are inconsistent with agreements raised by Respondent at trial and consistent with Petitioner's entitlement to TTD.

Petitioner's exhibits at trial show that Petitioner was given restrictions of no work from Dr. Verma beginning on November 19, 2019. The record reflects that Petitioner alleged that she was not aware of the restriction placed on November 19th. Thereafter, Petitioner's restrictions (per her treating physicians) remained unchanged through April 24, 2022. (Px1; PX2). While Petitioner was given restrictions placing her off of work beginning on November 19, 2019, both Petitioner's testimony and Respondent's Exhibit 2 establish that she continued to work for Respondent through December 13, 2019. (Tr. 12-13 and Rx2) The Arbitrator does not hold it against her that she continued working in pain as long as she could do so. Her dedication and professionalism to her profession were evident in demeanor at trial. No evidence was introduced that Petitioner was offered light duty work during the time period TTD was paid by Respondent.

During cross-examination, the Petitioner stated that she understood temporary total disability (TTD) as compensation received for periods when she was unable to work due to her work-related injuries (Tr. 36). She indicated that she did not work from December 13, 2019 through April 25, 2022, which is the timeframe claimed TTD on the request for hearing form. (Tr. 36, Arb X 1, p. 2)). However, it was evident to the Arbitrator that the Petitioner was referring specifically to not being able to work for the Respondent during that period. This became even clearer when the Respondent asked about her side jobs, to which she responded affirmatively, without hesitation or evasiveness, displaying a sincere and straightforward demeanor. She made no attempt to hide or downplay these side jobs. The Arbitrator reviewed the trial transcript regarding this exchange and noted that it did not fully capture the essence of the moment, the *zeitgeist* of the moment. There was a clear disconnect between the Petitioner and Respondent, which the Arbitrator found quite intriguing to observe.

Respondent admitted employment records from Columbia College into evidence at trial. (Rx9) Respondent, however, presented evidence that Petitioner was employed by Columbia College as an adjunct professor. The records from Columbia College reflect Petitioner was employed there from September 2016 through July 2020. (RX. 9, pp. 32 - 33). The records further reflect that during the period of December 13, 2019 through July 31, 2020, Petitioner earned \$6,599.00 from Columbia College. That is a period of 33 weeks she would have earned \$60,054.72 in wages (AWW of \$1,819.54 x 33) which, at her temporary total disability rate of \$1,213.02, would have entitled her to \$40,029.66. Her Columbia College earnings represented 10.9 percent of her average weekly wage while working for the Respondent or 6.97% of her yearly earning as computed under Section 12 of the Act. Additionally, it is clear that her employment at Columbia College was a part time position that she for years before her work accident and, thus, was in position to perform her duties with minimal physical effort. The Columbia College wages were not included in the calculation of her average weekly wage.

These records showed that Petitioner was employed by Columbia College as an adjunct professor teaching studio makeup from her date of accident through July 31, 2020 for which she was paid substantially less than her job with Respondent. (Rx9 pg. 21, 32) Petitioner admitted she was receiving TTD benefits during this time and was claiming TTD for this period at trial based on her Arb. X 1. (Tr. 36, 39) Respondent places great weight on this employment but fails to note that it was a part time position, for substantially less money and with no evidence that her duties were outside her restrictions.

Respondent admitted into evidence contracts between Petitioner and Pivot Point International, a beauty school. (Rx8). Petitioner was teaching at Columbia College for years before her accident and continued to do so afterward. These side jobs were not a significant source of income. The earnings from Pivot Point and CMS Makeup Art are totally insignificant to defeat the claim for TTD. This is clearly what *E.R. Moore Company vs. Industrial Commission* was referring to when the Court said that occasional wages or performing certain useful services will not preclude a finding of temporary total disability. The Arbitrator also cites *Zenith Company v. Industrial Commission*, 1991 Ill.2nd 278 (1982) in support of this argument.

Petitioner agreed to perform work as a makeup artist on the “100 C Textured Hair Fashion Shoot” on April 6, 2022. (Rx8 pp. 37-43) Petitioner admitted she was claiming TTD for this period at trial. Petitioner last received TTD August 19, 2021 in the amount of \$1,529.84. (Tr. 36, 39)

In addition to these contracts, Respondent also entered into evidence a cancelled check in the amount of \$500.00, endorsed and cashed by Petitioner. (Rx11) The check indicates on the memo line that Petitioner was paid to perform wedding makeup for the wedding of Elliot Mendel and Bridget Skaggs on July 24, 2020. (Rx11) Petitioner readily admitted to performing the side job. (Tr. 36-42)

The Arbitrator notes that the work Petitioner performed for Pivot Point International and for Ms. Skaggs was capable of working part-time while on recommended restrictions from her physicians. However, these were small side jobs, carried out for a brief period, and appeared to fall well within her stated capabilities. Moreover, these are part-time jobs which she performed for years before her accident. The part time jobs do not establish that she could fulfill her job duties for Respondent, which involved long and demanding workdays in excess of the 8-hour workday restriction imposed by Dr. Chams.

The Arbitrator does not agree with Respondent that Petitioner's integrity and honesty was compromised, especially considering she worked part-time during her claimed temporary total disability (TTD) period, when Respondent failed to pay TTD for significant periods of time. And, then issued \$42,855.22 and \$1,529.84 in less than one month. TTD payments made after Respondent's first Section 12 examination. The Arbitrator's position is supported by the two Illinois Supreme Court decisions.

Respondent's Exhibit 10 is the corporate filings of CMS Makeup Art Inc. (Rx10) Petitioner admitted that CMS Makeup Art Inc is a corporation she created through which she performs her freelance makeup work. (Tr. 41) Petitioner is the sole employee and owner. (Id.) The filings show that Petitioner maintained her corporate filings for this business since the date of her accident all the way through trial. (Rx10) Petitioner's maintenance of this incorporated status and annual payment of corporate fees only further shows Petitioner believes herself out as physically capable of performing the work of a makeup artist on part time basis and which she readily admitted on cross examination without any evasiveness or equivocation.

In light of the above, Arbitrator concludes that Petitioner is entitled to TTD from December 14, 2019 through April 24, 2022, representing 123-2/7th weeks.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (L) THE NATURE AND EXTENT OF INJURIES, THE ARBITRATOR FINDS AS FOLLOWS:

Petitioner is entitled to a specific loss pursuant to Section 8.1(b)(b)(v) of the Act. Consistent with that provision of the Act, the Arbitrator takes into consideration the enumerated factors:

Level of Impairment under the AMA Guides: With regard to Sec. 8.1(b)(i), the Arbitrator finds that on February 10, 2023, Dr. Troy Karlsson completed an impairment rating consistent with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*. Dr. Karlsson found a 0% impairment rating. The Arbitrator has considered this factor and affords some weight to this factor.

Occupation of the Injured Employee: Petitioner was employed as a makeup artist for the Respondent. Petitioner did not present any evidence as to the physical requirements of this job

other than that she would have to carry a makeup case and bags along with a chair. The ATI FCA indicates that the occupational job duties of a TV/Movie Makeup Artist is the light physical demand level and with work hours up to 15 hours per day. The FCA noted that she would carry multiple bags each weighing up to 10 pounds in addition to her work chair. The Arbitrator has considered this factor and finds this factor to be relevant to the disability determination and attaches some weight to this factor.

Age of the Employee at the Time of the Injury: Petitioner was 30 years old at the time of the injury. She is currently 35 years old. There was no evidence produced by either party to suggest that Petitioner's age played a factor in her injury or resulting disability. However, the Arbitrator notes that Petitioner is a younger employee who has a long work life ahead of her. Accordingly, the Arbitrator finds that her 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). The Arbitrator therefore gives greater weight to this factor in finding the nature and extent of disability.

Employee's future earning capacity. No evidence was presented by Petitioner that he has sustained any diminished earning capacity as a result of the accident. The Arbitrator therefore affords this factor no weight to this factor in determining the nature and extent of Petitioner's disability.

Evidence of Disability Corroborated by the Treating Medical Records. The Arbitrator has considered this factor and notes the medical records show that Petitioner sustained torn labrum in her left shoulder that required surgical intervention as a result of this accident. Post surgery Dr. Chams noted that Petitioner was positive for residual impingement in the left shoulder. The Arbitrator notes that in the February 2022 visit with Alyssa Scanlon, PA, Petitioner noted she still had parascapular pain and neck pain with some radicular symptoms down the arm, symptoms that were consistently recorded by her medical providers. Dr. Chams released her to return to work full duty but placed an 8-hour work restriction. The Arbitrator affords great weight to this factor in evaluation the nature and extent of Petitioner's disability.

After considering all of the factors, Commission precedent, and for the reasons set forth above, the Arbitrator finds that Petitioner sustained a loss of 12.5 % loss of use of the person as a whole. Respondent is entitled to a 2% 8(d)2 credit. (See, Section N, *infra*.)

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (N) WHETHER RESPONDENT IS ENTITLED TO CREDIT, THE ARBITRATOR FINDS AS FOLLOWS:

The parties stipulated that Respondent is entitled to credit of \$8,366.90 for prepaid permanent partial disability (PPD) benefits representing 10 weeks of PPD 2% of a person pursuant to Section 8(d)2 of the Act. This amount is in addition to a credit for TTD previously paid for the stipulated amount of \$136,873.46. (Tr. 3, ARB X 1). The Arbitrator is bound by the trial stipulations and, thus, finds that Respondent is entitled to credit of \$8,366.90. *Walker v. Industrial Comm'n*, 345 Ill.App.3d 1084 (2004)

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014743
Case Name	Lontainio Robinson v. Springfield School District 186
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0440
Number of Pages of Decision	20
Decision Issued By	Raychel Wesley, Commissioner, Frank Soto, Commissioner

Petitioner Attorney	Mark N. Lee
Respondent Attorney	Jessica Bell

DATE FILED: 11/3/2025

/s/ Raychel Wesley, Commissioner

Signature

DISSENT

/s/ Frank Soto, 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)
SPRINGFIELD		☒ Modify Causation, Temporary Disability, Permanent Disability	☐ PTD/Fatal denied
			☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LONTAINIO ROBINSON,

Petitioner,

vs.

NO: 19 WC 14743

SPRINGFIELD SCHOOL DISTRICT 186,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's right knee condition is causally related to the June 27, 2018 accidental injury, entitlement to Temporary Total Disability benefits, and the nature and extent of any permanent disability, and being advised of the facts and law, modifies the Decision as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

PROLOGUE

The Commission observes Petitioner's personal identity information was unredacted from Joint Exhibit 1. The Commission cautions Counsel to adhere to Supreme Court Rule 138. *Ill. S. Ct. R. 138* (eff. Jan. 1, 2018).

CONCLUSIONS OF LAW

I. Causal Connection

The Arbitrator found Petitioner suffered a temporary aggravation of her pre-existing osteoarthritis that resolved prior to her seeking care at Orthopedic Center of Illinois. The Commission views the evidence differently.

It is well established that an accident need not be the sole or primary cause—as long as employment is a cause—of a claimant's condition. *Sisbro, Inc. v. Industrial Commission*, 207 Ill. 2d 193, 205 (2003). Furthermore, an employer takes its employees as it finds them (*St. Elizabeth's*

Hospital v. Illinois Workers' Compensation Commission, 371 Ill. App. 3d 882, 888 (5th Dist. 2007)), and a claimant with a pre-existing condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Commission*, 92 Ill. 2d 30, 36 (1982). When a pre-existing condition is asymptomatic and then becomes painful as the result of work-related activity, that symptomatic condition is compensable under the Act as an aggravation of the pre-existing condition even in the absence of an organic or structural change in the pre-existing condition. *Tazewell County v. Illinois Workers' Compensation Commission*, 2025 IL App (4th) 230754WC, ¶ 31. As the Appellate Court held in *Schroeder v. Illinois Workers' Compensation Commission*, 2017 IL App (4th) 160192WC, the inquiry focuses on whether there has been a deterioration in the claimant's condition:

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. *Schroeder* at ¶ 26 (Emphasis added).

It is with this standard in mind that we analyze Petitioner's June 27, 2018 work accident.

At the outset, the Commission finds it important to clarify Petitioner's clinical picture leading up to the June 27, 2018 injury. While subsequent diagnostic imaging revealed the presence of right knee osteoarthritis, we emphasize the record is devoid of any evidence that Petitioner's pre-existing condition was symptomatic prior to the work injury. Rather, the record establishes Petitioner had no right knee symptoms, problems, or treatment prior to her undisputed work accident.

On June 27, 2018, Petitioner was assigned to strip the wax from the school's cafeteria/gymnasium floor. There was a significant wax buildup and Petitioner explained she spent several hours squatting, kneeling, and duck-walking while she utilized a hand-scraper to clear wax from the entire floor. After maintaining this awkward position on a prolonged basis, Petitioner experienced an onset of significant right knee pain. T. 8-9. Petitioner continued to work through the summer and did not seek treatment; as the weeks progressed, her pain persisted. Ultimately, on August 28, 2018, Principal Alicia Miller witnessed Petitioner having visible difficulty walking and immediately sent Petitioner home with instructions to consult a doctor. T. 11, JX1.

The next day, Petitioner presented to Respondent's occupational health clinic and gave a history of pain and mechanical symptoms since June 27, 2018. The Midwest Occupational Health records reflect that over the next two weeks, Petitioner continued to report persistent pain and her objective examination findings included antalgic gait, edema, and reproducible pain with range of motion testing; at the September 11, 2018 re-evaluation, Petitioner was referred for orthopedic evaluation. JX3.

Pursuant to that referral, Petitioner came under the care of Dr. Brett Wolters at Springfield Clinic. At the September 13, 2018 initial evaluation, Petitioner gave a consistent history of developing right knee pain after prolonged squatting to clean the gymnasium floor in June; after examination revealed antalgic gait, swelling, tenderness, and pain with range of motion, Dr. Wolters ordered a right knee CT arthrogram and physical therapy. JX4. Petitioner commenced physical therapy on September 27, 2018, and the CT scan, performed on October 1, 2018, revealed osteoarthritis as well as knee joint effusion with synovitis. JX4.

When Petitioner followed up with Dr. Wolters on October 9, 2018, she reported therapy had helped “to some degree,” but she continued to have pain; noting the results of the CT scan, Dr. Wolters administered a cortisone injection and ordered further therapy, which Petitioner attended through November 6, 2018. JX4, JX5. The physical therapy discharge summary reflects Petitioner demonstrated “normal range of motion and functional strength” but had only met one of six short-term goals, with the “reasons” for not achieving all goals “include inconsistent pain behaviors.” JX5.

At the November 9, 2018 re-evaluation with Dr. Wolters, Petitioner reported persistent pain despite the cortisone injection and physical therapy. Dr. Wolters noted the physical therapist’s finding of “normal motion, strength and balance,” then documented his own examination findings, including mildly antalgic gait, decreased range of motion, and pain with forced flexion. Given Petitioner’s “clinical and radiographic findings,” Dr. Wolters maintained Petitioner on restricted duty and recommended an Euflexxa injection series. JX4.

The injections were done on November 28, 2018; December 12, 2018; and December 21, 2018. The December 21, 2018 procedure note reveals Petitioner’s physical examination was unchanged; afterwards, Petitioner was directed to contact Dr. Wolters in four to five weeks and provide an update on her response to the injections. JX4. Petitioner testified she was thereafter directed to return to full duty pursuant to the opinions of Respondent’s §12 physician, Dr. John Krause; as “workman’s comp was over with,” she returned to work and there was no follow-up with Dr. Wolters. T. 15.

Petitioner testified she resumed her regular work duties, but her knee “was still hurting.” T. 15. Ultimately, she “couldn’t deal with this pain” and sought a second opinion through Orthopedic Center of Illinois. T. 15. At the March 21, 2019 evaluation with Dr. Barry Mulshine, Petitioner reported an onset of knee pain in June 2018 while squatting to clean a floor; she described her then-current symptoms as “achy” pain with occasional sharp pain as well as occasional locking. JX7. On examination, Dr. Mulshine observed mild limp, decreased range of motion, pain with extreme flexion, mild tenderness to palpation at the medial joint line, and weakly positive McMurray’s test. Dr. Mulshine’s assessment was “[n]ine month history of pain with occasional mechanical symptoms right knee. This became symptomatic after working in a crouched position back in June.” JX7. Noting Petitioner symptoms and exam were suspicious for a meniscus tear, Dr. Mulshine recommended further workup with an ultrasound; Dr. Mulshine also advised that if her pain persisted, arthroscopic evaluation could be considered.

The ultrasound was performed on April 12, 2019 and when Petitioner followed-up with Dr. Mulshine on April 23, 2019, the doctor indicated the ultrasound revealed a possible small peripheral medial meniscal tear. Given Petitioner’s continued pain complaints and objective examination findings, including decreased range of motion, swelling, and positive McMurray’s test, Dr. Mulshine recommended arthroscopy, which was performed on May 24, 2019. JX7.

To summarize, following her June 27, 2018 work activities, Petitioner had an acute onset of significant right knee pain and developed a perceptibly altered gait that persisted throughout the summer and into the school year. At Principal Miller’s direction, Petitioner commenced a course of care through Respondent’s occupational health clinic and shortly thereafter was referred for orthopedic evaluation, coming under the care of Dr. Wolters. Dr. Wolters recommended conservative care, with physical therapy and a cortisone injection. The physical therapy records

reflect an initial improvement followed by worsening symptoms, with the therapist noting inconsistent pain behaviors; as of the November 6, 2018 discharge, the therapist opined Petitioner had “normal range of motion and functional strength.” JX5. The Commission observes, however, that Dr. Wolters’ objective examination findings from three days later establish continuing functional deficits, and Dr. Wolters concluded Petitioner’s symptoms warranted further intervention with Euflexxa injections. The Commission lends more credence to the objective examination findings of the treating orthopedist than those of the physical therapist. The Euflexxa injection series was completed on December 21, 2018, and although Petitioner was to update Dr. Wolters on her response to the injections, Petitioner had no further follow-up with the doctor. In the Commission’s view, Petitioner did not voluntarily cease treatment with Dr. Wolters because her symptoms had fully resolved; rather, Petitioner credibly testified she had persistent pain but further care was denied by Respondent pursuant to Dr. Krause’s §12 report. Our review of the record reveals Petitioner’s right knee never returned to its pre-accident asymptomatic baseline.

It is with this sequence of events in mind that we consider the opinion of Respondent’s §12 examiner, Dr. Krause. In denying causal connection, Dr. Krause conceded Petitioner’s June 27, 2018 work activities aggravated her pre-existing condition but opined the aggravation had resolved “before she even sought treatment” and Dr. Wolters was “treating her pre-existing osteoarthritis.” JX6. In the Commission’s view, Dr. Krause’s opinion is contradicted by the evidence. Specifically, Dr. Krause’s belief that Petitioner had returned to her pre-accident baseline prior to seeking care is incompatible with Principal Miller’s incident report; therein, Principal Miller documented that she observed Petitioner limping and directed Petitioner to seek treatment: “Once this writer became aware of the situation and noticed the employee having difficulty walking on 8/25/18, the employee was sent home to go to the doctor after speaking with HR and making them aware of what the employee shared with me.” JX1 (Emphasis added). To be clear, if Petitioner had returned to her pre-accident asymptomatic state, there would have been nothing for Principal Miller to “notice” about Petitioner’s gait and functionality nor any reason for her to send Petitioner to the doctor. In the Commission’s view, Dr. Krause’s opinion that Petitioner had only a transient aggravation that did not require any treatment at all is entitled to little weight. *See Sunny Hill of Will County v. Illinois Workers’ Compensation Commission*, 2014 IL App (3d) 130028WC, ¶ 36 (Expert opinions must be supported by facts and are only as valid as the facts underlying them.)

The Commission finds Petitioner’s current right knee condition is causally connected to her June 27, 2018 accident. We further find Petitioner’s right knee treatment incurred through Dr. Mulshine’s August 8, 2019 release to full duty is related to her June 27, 2018 injury.

II. Temporary Disability

The Request for Hearing reflects the disputed period of Temporary Total Disability (“TTD”) benefits is July 1, 2019 through August 8, 2019. ArbX1. The Commission observes this corresponds, in part, to the dates Petitioner was under restrictions imposed by Dr. Mulshine.

The record reflects Petitioner underwent surgery with Dr. Mulshine on May 24, 2019. At the June 11, 2019 follow-up, Dr. Mulshine restricted Petitioner to modified duty, no lifting greater than 40 pounds. JX7. At the July 11, 2019 re-evaluation, Dr. Mulshine did not impose specific restrictions; instead, the doctor ordered physical therapy and noted Petitioner told him “she will not be allowed to return to work until she is 100%. I explained that I will not be able to keep her off work indefinitely for arthritis pain.” JX7. On August 8, 2019, Dr. Mulshine released Petitioner

to unrestricted duty. JX7. Petitioner testified she began missing time immediately after the surgery and remained off work until the August 8, 2019 full-duty release. T. 15.

The Commission's review of the record reveals Petitioner was either authorized off work completely or under work restrictions that Respondent did not accommodate from May 24, 2019 through August 8, 2019. However, Petitioner alleged her entitlement to TTD benefits commenced on July 1, 2019, and she is bound by that stipulation. *See Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004). The Commission finds Petitioner is entitled to 5 4/7 weeks of TTD benefits, representing July 1, 2019 through August 8, 2019.

III. Permanent Disability

Petitioner's work accident occurred after September 1, 2011; therefore, §8.1b is applicable. Pursuant to §8.1b(b), the Commission is to determine permanent partial disability based upon five 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. 820 ILCS 305/8.1b(b).

§8.1b(b)(i) – impairment rating – Neither party submitted an impairment rating. As such, the Commission assigns no weight to this factor and will assess Petitioner's permanent disability based upon the remaining enumerated factors. *Corn Belt Energy Corp. v. Illinois Workers' Compensation Commission*, 2016 IL App (3d) 150311WC, ¶ 47.

§8.1b(b)(ii) – occupation of the injured employee – Petitioner was a custodian. Following her course of care, she was released with no restrictions and returned to her pre-accident occupation. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(iii) – age at the time of the injury – Petitioner was 46 on her date of accident. The Commission notes that due to her age, Petitioner will experience her residual complaints for an extended period. The Commission finds this factor weighs in favor of increased permanent disability.

§8.1b(b)(iv) – future earning capacity – There is no direct evidence Petitioner's work accident had an adverse impact on her future earning capacity. The Commission finds this factor weighs in favor of decreased permanent disability.

§8.1b(b)(v) – evidence of disability corroborated by treating medical records – Petitioner's work accident resulted in surgical intervention to her right knee: arthroscopy with debridement of hypertrophic synovium at the medial compartment. JX7. Following post-operative rehabilitation, Petitioner was re-evaluated by Dr. Mulshine on August 8, 2019; documenting Petitioner had a "very slight limp" as well as persistent but mild tenderness, Dr. Mulshine released Petitioner to return to full duty work. Petitioner testified she continues to experience intermittent sharp pain and has functional deficits that appreciably impact her activities of daily life, including traversing stairs and performing household chores. The Commission finds the evidence reflects Petitioner had a good surgical outcome and this factor weighs in favor of decreased permanent disability.

Based on the above, the Commission finds Petitioner sustained 17.5% loss of use of the right leg.

All else is affirmed.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$407.15 per week for a period of 5 4/7 weeks, representing July 1, 2019 through August 8, 2019, that being the disputed period of temporary total incapacity for work under §8(b) of the Act. Pursuant to the parties' stipulation, Respondent previously paid \$6,514.40 for undisputed TTD benefits.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$366.44 per week for a period of 37.625 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the 17.5% loss of use of the right leg.

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

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

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

November 3, 2025

/s/ Raychel A. Wesley

RAW/mck

O: 9/3/25

/s/ Carolyn M. Doherty

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DISSENT

I respectfully dissent from the Decision of the majority and would have instead found that Petitioner failed to prove the current condition of her right knee is causally related to her work activities. In a case involving an aggravation of a preexisting unrelated condition based upon the claimant's claim of pain alone, without evidence of an organic or structural change in

the preexisting condition, the compensability of that claim is based, in large part, upon the credibility of the claimant. In those situations, a question exists as to whether or not the current pain complaints existed prior to the claimed work injury. If there is an issue with the claimant's credibility, the claimant should either proffer a causation opinion to rebut the employer's Section 12 opinions or, at a minimum, introduce some evidence corroborating the claimant's testimony of being pain free prior to his or her work accident such as the medical records from claimant's primary care physician prior to the alleged accident date, assuming those records support the claimant's testimony¹.

In this case, there are multiple issues which undermined Petitioner's credibility regarding the absent of prior pain complaints, Petitioner did not immediately report the incident, Petitioner continued to work full duty after the alleged incident, Petitioner did not seek medical treatment soon after her claimed work injury, Petitioner's physical therapy was terminated due to inconsistent effort, and Petitioner's medical records do not contain any causation opinion nor did Petitioner obtain an expert medical opinion to rebut the medical opinions of Respondent's Section 12 examiner.

In the instant case, the majority affords too much weight to Petitioner's testimony given the facts in this case. Under the majority's decision, a claimant is not required to proffer any medical evidence establishing causal connection between his or her work activities and the pain complaints even in situations when the claimant's credibility is undermined which seems inconsistent with holdings in *Sisbro* and other cases. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193 (2003)(An employee may establish a causal connection in such cases if the claimant can show that a work-related injury played a role in aggravating or accelerating a preexisting condition); *Durand v. Industrial Comm'n*, 224 Ill. 2d. 53 (2006)(An employee who suffers a repetitive trauma injury must meet the same standard of proof as an employee who sustains an injury arising from a single identifiable event); *Peoria County Belwood Nursing Home*, 115 Ill. 2d. 524 (1987)(An employee who alleges injury based on repetitive trauma must "show [] that the injury is work related and not the result of a normal degenerative aging process); *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470 (1987) (Although medical testimony of causation is not necessarily required, where the question is one within the knowledge of experts only and not within the common knowledge of laypersons, expert testimony is necessary to show that [an employee's] work activities caused the condition complained of); and *Johnson v. Industrial Comm'n*, 89 Ill. 2d 438 (1982)(where there is evidence of a preexisting condition, medical evidence is necessary to establish a causal connection between the alleged repetitive trauma and the employee's resulting condition of ill-being).

In the instant case, the §12 examiner, Dr. Krause, opined Petitioner sustained a temporary aggravation of her preexisting right knee osteoarthritis which ceased to be causally related to her work activities and that she returned to her pre-accident baseline condition. Dr. Krause essentially attributed Petitioner's current condition to the natural progression of her preexisting osteoarthritis. Petitioner did not proffer any medical evidence contradicting Dr.

¹Such as delayed reporting of the injury or delayed treatment or an unwitnessed accident, confusion regarding the mechanism of injury, inconsistent medical histories, extremely advanced preexisting condition or some facts within the claimant's medical records which cast doubt upon the credibility of claimant's pain complaints or the medical records do not provide a causation opinion between the onset of pain and claimant's work activities,

Krause's opinions. Without any supporting causation opinion, the Commission is essentially left to consider whether Petitioner's testimony in and of itself is sufficient to satisfy her burden of proof in light of Dr. Krause's contrary §12 opinion.

Pursuant to *Tazewell County v. Illinois Workers' Compensation Commission*, when a preexisting condition is asymptomatic and then becomes painful as the result of work-related activity, that symptomatic condition is compensable under the Act as an aggravation of the preexisting condition even in the absence of an organic or structural change in the preexisting condition. 2025 IL App (4th) 230754WC, ¶ 31. However, the present matter is distinguishable from *Tazewell County* given the evidence which undermines Petitioner's testimony regarding the temporal relationship between her work activities and the onset of her pain complaints.

After the alleged work accident on June 27, 2018, Petitioner continued to work full duty and did not seek any medication attention for 43 days until August 9, 2018, at which time she presented to Dr. Mastan Indlamuri at Central Counties Health Centers. Petitioner thereafter worked several more weeks without seeking additional medical treatment until August 29, 2018, after Respondent's principal had noticed her limping and sent her to Respondent's occupational health clinic. Petitioner also waited until August 24, 2018, 58 days after the accident date, to fill out an accident report notifying her employer.

In addition to her delays in seeking treatment and reporting the accident, Petitioner's physical therapy records document a significant pattern of inconsistent pain behaviors.² Further, the description Petitioner provided to her treating doctors regarding the specific mechanism of injury was also somewhat inconsistent and vague. At the hearing, Petitioner testified that she injured her right knee while kneeling and squatting to clean the cafeteria floor. However, in addition to this work task, Petitioner also told treatment providers that she had been moving furniture, sitting and bending at the school, and repeatedly bumping her knees. These varying possible mechanisms of injury undermines Petitioner's credibility.

To find Petitioner's questionable subjective pain complaints alone without a supporting medical causation opinion, or other evidence of being pain free prior to her alleged work accident sufficient to rebut the §12 opinions would, in essence, make §12 of the Act superfluous. In such a situation, all a claimant would have to do to meet their burden is simply say, "I have pain" without any other evidence supporting her testimony of being pain free prior to her work accident. For these reasons, I respectfully dissent from the Decision of the majority.

/s/ Frank J. Soto

November 3, 2025

² On November 6, 2018, Petitioner was discharged from physical therapy with several inconsistencies noted throughout her course of treatment, including but not limited to intermittent gait antalgia. The physical therapist observed Petitioner ambulate from the parking lot into the clinic with a normal gait, but once inside, Petitioner demonstrated an intermittent antalgic gait with a limp of varying degrees of severity. The physical therapist also observed Petitioner require use of her hands to sit down in a chair but later stand up to adjust her clothing and sit back down without difficulty. Petitioner further demonstrated an inability to crouch yet later rested in a kneeling position sitting back on her heels. At the time of her discharge, the physical therapist believed that Petitioner had normal motion, strength, and balance. Such inconsistencies call into question the reliability of Petitioner's subjective pain complaints.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC014743
Case Name	Lontanio Robinson v. Springfield School District 186
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Mark Lee
Respondent Attorney	John Langfelder

DATE FILED: 5/15/2024

/s/Edward Lee, Arbitrator

Signature**INTEREST RATE WEEK OF MAY 14, 2024 5.165%**

STATE OF ILLINOIS)
)
 COUNTY OF SPRINGFIELD)

☐	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**

LONTANIO ROBINSON
 Employee/Petitioner

Case # **19** WC **014743**

v.

Consolidated cases: **N/A**

SPRINGFIELD PUBLIC SCHOOL DISTRICT 186
 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 Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on March 27, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ 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, **06/27/18**, 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.
- In the year preceding the injury, Petitioner's average weekly wage was \$610.73.
- On the date of accident, Petitioner was 46 years of age, single with no dependent children.
- Respondent paid TTD benefits in the amount of \$6,514.40 and medical benefits in the amount of \$5,375.52.

ORDER

An accident did occur that arose out of and in the course of Petitioner's employment by Respondent.

Timely notice of the accident was given to Respondent.

Medical expenses incurred after December 21, 2018 are denied.

TTD benefits from July 1, 2019 through August 8, 2019 are denied.

Petitioner is awarded permanent partial disability of 10% loss of use of the right leg.

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

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

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

Edward Lee

Signature of Arbitrator

MAY 15, 2024

LONTANIO ROBINSON

Employee/Petitioner

Case # **19** WC **014743**

v.

SPRINGFIELD SCHOOL DISTRICT 186

Employer/Respondent

The following testimony and evidence were presented at arbitration:**Testimony**

Petitioner Lontainio Robinson testified that she was employed as a custodian with Springfield Public School District since 2011. Her duties include lifting, cleaning, vacuuming, wiping down walls, scrubbing and waxing floors and taking out garbage. On June 27, 2018, Petitioner testified that they were scrubbing floors in the cafeteria, and she had been kneeling down and squatting while scraping wax from the floor. When she stood up her knees were hurting but she continued to clean, sweep, and scrub the cafeteria floor. She stated her right knee got worse, but she kept working. She indicated she told the head custodian (Ed Lind) about her knee hurting but said he brushed it off. She did not fill out an incident report that day.

When school started back, Petitioner stated the principal (Alicia Miller) noticed her limping and Petitioner told her what happened. Petitioner stated the principal told her to leave and go to the doctor. Petitioner filled out an incident report on August 24, 2018, the same day the principal told her to take off.

Petitioner testified that she had initially seen her primary care physician at Central Counties Health Centers on August 9, 2018. After completing the report, she was then seen at MOHA on September 11, 2018, and by Dr. Wolters at Springfield Clinic where she was treated with an injection and physical therapy. Petitioner was off work as she was in pain and stated she had no complaints prior to the accident. Petitioner saw Dr. Krause at the request of the School District around December 10, 2018, and went back to work after that, but did not stop treating. Petitioner testified that she was continuing to treat as of the date of arbitration. Petitioner stated she went to the Orthopedic Center as her knee was hurting, workman's comp was over, and she was still working. Petitioner stated she had surgery on May 24, 2019, took sick time and was off work until August 8, 2019, after which she resumed working.

Petitioner testified that she has a slight limp, and her knee still hurts. She testified that her limp was not improved after her surgery and release from Dr. Mulshine (Orthopedic Center). Petitioner testified that she has not sought medical care since her surgery and release. Petitioner testified that she continues to work full time and receive merit and pay increases since 2018.

On cross examination, Petitioner stated she knew she was supposed to report a work-related accident to her supervisor and said she did. Petitioner testified that she was kneeling in a squat position and then demonstrated it for the Arbitrator. She testified that she continued to work full time full duty until August 9, 2018 when she saw her primary care physician and then worked a couple weeks after that until the principal noticed her limping. She filled out the incident report on August 24, 2018 and was taken off work until released in December 2018. Petitioner confirmed she was seen at MOHA and by Dr. Wolters at Springfield Clinic and that she received a cortisone injection and completed physical therapy. Once discharged from therapy, Petitioner received a series of three injections and saw Dr. Krause in St. Louis, after which she returned to work full time full duty.

Petitioner testified that she continued to work full time, full duty until March 21, 2019, at which time she went to see Dr. Mulshine at the Orthopedic Center. She testified she continued to work full time, full duty from that date until her arthroscopic procedure on May 24, 2019. After the visit of August 8, 2019, Petitioner returned to work full time, full duty. Petitioner testified that she gave her medical providers all the information about her history and activities at the time of each visit. Petitioner stated the surgery did not help but she testified that she has had no treatment since August 8, 2019, and continues to work full time, full duty since that date.

Medical Evidence and Treatment History

Petitioner testified that the injury to her right knee occurred on June 27, 2018. She testified that the head custodian was aware of her right knee hurting but an incident report was not completed until August 24, 2018. (Exhibit #1) The report shows Petitioner was scrubbing a build-up of wax from the floor in the gym and kneeling down while scraping when she stood up and noticed her knees were weak and painful. (Ex. #1) The portion of the incident report completed by the principal (Alicia Miller) showed that the head custodian (Ed Lind) was told Petitioner's knees were hurting when she came in limping one day but did not inform him her knees were hurting as a result of her job duties. (Ex. #1) Petitioner was sent home by the principal (Miller) on August 25, 2018 when she saw Petitioner limping and told Petitioner she should have informed Mr. Lind of her injuries immediately and completed the District's paperwork to document her injuries at the time it occurred. (Ex. #1 at p. 4)

On August 9, 2018, Petitioner was seen at Central Counties Health Centers by Dr. Indlamuri, her primary care physician prior to the report. (Ex. #2) She reported a history of right knee pain for four weeks that started after floor cleaning but denied any swelling or weakness in her leg. (Ex. #2 at p. 1) Petitioner was advised to use over the counter Tylenol, a heating pad and to be physically active. The exam showed no acute bony abnormality and Petitioner returned to work. (Ex. #2)

On September 6, 2018, Petitioner was seen at MOHA with complaints of right knee pain. (Ex. #3) She reported working on June 26th or 27th scraping floors and squatting down for majority of the day and the following day. (Ex. #3) She described being on the balls of her feet and duck walking across the floor scraping and noticed she was stiff and sore and having pain in the right knee when she stood up. (Ex. #3). She was noticed to be limping by a supervisor and instructed to come to the Clinic to determine if restrictions were needed. (Ex. #3 at p. 4) Petitioner stated she rolled over the night before (September 5, 2018) and heard a pop in her right knee with excruciating pain, which was the first time this occurred. (Ex. #3 at p. 1) She indicated she was utilizing crutches when out of the house and a knee brace all the time. She was given temporary work restrictions and was to return in one week after an MRI. (Ex. #3) On September 11, 2018, Petitioner returned for follow-up, but could not have an MRI due to having a nerve stimulator. Due to concern for internal derangement in the right knee, a CT Arthrogram was ordered and referral to an orthopedic physician given. (Ex. #3)

On September 13, 2018, Petitioner was seen by Dr. Brett Wolters at Springfield Clinic and assessed with right knee pain. Petitioner gave a history of cleaning gym floors, squatting the entire time and stated that she was in that position between 5 and 7 hours with increasing pain in right knee at the end of the day. (Ex. #4 at p. 1) She stated she could hardly walk the next day and has been wearing a brace and using crutches. Dr. Wolters recommended continued conservative treatment of her right knee with formal physical therapy 2-3 times per week for the next 6 to 8 weeks. She was given a home exercise program to start and was to return in four weeks after the CT arthrogram was performed. (Ex. #4)

On September 27, 2018, Petitioner underwent an initial evaluation for physical therapy. She gave a history of scraping wax build-up off a floor and noticing pain after the first day. She worked the rest of the summer without restrictions but developed a limp. The administrator noticed her limping once school started and sent

her home, and she has not been back to work since the end of August. (Ex. #5 at p. 1) Petitioner described her duties as general custodial duties, including standing, walking, lifting trash cans, mopping, sweeping, carrying, pushing, and pulling. She was assessed with a chief complaint of right knee pain three months duration which began at work after performing prolonged squatting activities. A short course of physical therapy was recommended to address her impairments and allow her to return to work without limitations. (Ex. #5 at p. 3)

On October 1, 2018, Petitioner underwent a CT arthrogram of the right knee with a history of knee pain and symptoms for four months after prolonged squatting. The findings showed no displaced meniscal tear in the medial or lateral compartment, a large Baker's cyst, knee joint synovitis and moderate medial/patellofemoral compartment osteoarthritis. (Ex. #4 at p. 5-6) The cruciate and collateral ligaments were intact, the extensor mechanism appeared normal, there was no acute fracture and muscle bulk was normal. (Ex. #4 at p. 5-6)

On October 3, 2018, Petitioner returned to therapy and was observed to have full range of motion of the right knee. When taking off/on her right shoe and sitting with her right foot on her left thigh, Petitioner was noted to demonstrate the intermittent ability to fully weight bear throughout the right lower extremity without the knee buckling and without upper extremity support, but at other times was observed to have control and repeated buckling of the knee. (Ex. #5 at p. 5) She tolerated active range of motion and strengthening of the right knee and hip without complaining of pain. On October 5, 2018, Petitioner was noted to have full right knee extension during all exercises and spontaneously performed mini squats with symmetrical weight bearing. Petitioner stated she was hurting more today and, when asked what she did the day before, she reported she cleaned her house and went to the grocery store. (Ex. #5 at p. 7) Petitioner was assessed with questionable performance of home exercises but was continued to be observed to have good range of motion and strength of the right lower extremity. (Ex. #5 at p. 8)

On October 9, 2018, Dr. Wolters saw Petitioner for follow-up after the CT arthrogram and she indicated that physical therapy helped some. Petitioner was walking with a mildly antalgic gait with full range of motion in the bilateral knees. (Ex. #4 at p. 9) The CT arthrogram and x-rays demonstrated moderate chondromalacia in the medial compartment, but no obvious meniscus tear was seen. (Ex. #4 at p. 9) The assessment was right knee medial and patellofemoral compartment chondromalacia, moderately severe. (Ex. #4 at p. 9) Dr. Wolters recommended continuation of physical therapy with a cortisone injection and to follow-up in one month. Dr. Wolters stated he did not believe any surgical intervention would be necessary. (Ex. #4 at p. 9)

On October 10, 2018, Petitioner arrived at therapy without assistive device or knee brace and tolerated progression of all exercises, was able to complete all sets and reps asked, and full range of motion of the knee was observed. (Ex. #5 at p. 9) On October 12, 2018, Petitioner reported no increase in pain after the last treatment and stated she had probably been doing too much at home. (Ex. #5 at p. 11) On October 17, 2018, the progress report showed Petitioner reported her condition improved with no increase in pain following her treatment but had increased pain in her knee last night for unknown reasons. (Ex. #5 at p. 13) Petitioner was able to achieve full squat without upper extremity support, was able to maintain crouched position for 30 seconds with upper extremity support, was able to maintain kneeling for one minute with upper extremity support, and made improvements in gait, range of motion, strength and functional mobility since beginning physical therapy. (Ex. #5 at p. 13-15) Her knee extension range of motion was symmetrical with a normal gait, she ambulated without external support or bracing, and was able to complete all activities asked during the treatment session. (Ex. #5 at p. 14)

On October 22nd and 26th, Petitioner reported her symptoms were the same but claimed she thought she tore a ligament in her knee or chipped her kneecap and that the ligament healed by itself by the time she got to the doctor. Petitioner arrived without assistive device or knee brace and a normal gait pattern was observed. (Ex. #5 at p. 18) On October 31, 2018, Petitioner reported symptoms were about the same. On November 2, 2018, she

continued to state she had pain in the right knee but arrived without assistive device or knee brace and a normal gait pattern was observed. Petitioner demonstrated the ability to perform quad kneeling, quadruped position, pushing, pulling, stairs, and walking with normal gait and no deviations were observed. She was to be assessed at the next session and discharge was anticipated. (Ex. #5 at p. 21)

On November 6, 2018, Petitioner was seen for discharge. She complained of right knee pain and did not feel she would be able to return to work because she fatigued so quickly. Petitioner was observed to ambulate from the parking lot to the Clinic with a normal gait pattern, but once inside, she would demonstrate intermittent antalgic gait with varying degrees of severity. (Ex. #5 at p. 23) After completion of her physical therapy, Petitioner was demonstrating normal range of motion and functional strength of the right knee and lower extremity, demonstrated the ability to perform kneeling, crouching, squatting, negotiating stairs, pushing/pulling a 500-pound sled, and ambulating up & down ramps without difficulty. (Ex. #5 at p.24) Petitioner did not believe she was ready to go back to work. Even though her CT scan was normal, she believed something was wrong with her knee like a torn ligament or busted patella. (Ex. #5 at p. 24) Multiple interventions for pain reduction had no effect on her symptoms, but she also demonstrated several inconsistencies throughout the course of her treatment with intermittent gait antalgia, inability to crouch, and need for use of hands to sit down in a chair, but then would stand up to adjust clothing and sit back down without difficulty. Although she did not meet her goals, the reason was stated as inconsistent pain behaviors and further skilled therapy was not warranted. Petitioner was demonstrating normal motion, strength, and balance and was discharged from care. (Ex. #5 at p. 25)

On November 9, 2018, Petitioner saw Dr. Wolters and said she felt like she was still limping. Petitioner had been discharged from physical therapy as she demonstrated normal motion strength and balance. (Ex. #4 at p. 12) Petitioner stated she did not feel she was ready to go to work full time and every time she did housework at home, she had to sit and rest before she could continue. Dr. Wolters' assessment did not change (primary localized osteoarthritis right knee) and he recommended a series of Euflexxa injections with restrictions of no repetitive squatting or kneeling, and no repetitive ladders or stairs.

On November 28, 2018, Petitioner received the first Euflexxa injection and returned for the second injection on December 12, 2018. The impression was degenerative arthritis in the right knee. On December 21, 2018, Petitioner returned for her third injection and was to call back in four to five weeks for a progress report but did not follow-up or return to Dr. Wolters. (Ex. #4 at p. 18)

On December 10, 2018, Petitioner was seen for a Section 12 exam by Dr. John Krause. (Ex. #6) Petitioner gave a history of working over the summer cleaning the school and spending 8 hours squatting and stripping wax off the floor. She said she had significant knee pain that night and came back the next day, spending another 4 hours squatting and stripping wax off the floor. (Ex. #6) She stated the pain did not significantly improve and saw her primary care physician. She was seen at MOHA and an orthopedic referral was recommended. She saw Dr. Wolters and a CT arthrogram was performed, showing osteoarthritis primarily at the patellofemoral joint with no evidence of meniscal pathology. Petitioner said she experienced no relief from a cortisone injection she received, and Dr. Wolters recommended Euflexxa injections. At the time of the exam, Petitioner had one such injection on November 29, 2018 and was to receive two more. (Ex. #6) She worked full duty through the summer and was on work restrictions once she started treatment for her knee and denied any new trauma.

Dr. Krause performed a physical exam, reviewed the CT arthrogram, and agreed there was no evidence of meniscal pathology. Dr. Krause stated she had significant loss of articular cartilage and obtained new x-rays that day (AP, lateral, oblique and sunrise views) which showed degenerative changes primarily in the medial compartment of the knee. (Ex. #6) Dr. Krause assessed Petitioner with pre-existing degenerative joint disease of the right knee primarily in the patellofemoral compartment and an overuse injury with aggravation of her pre-

existing osteoarthritis. Dr. Krause stated that Petitioner's history, medical records, CT arthrogram and x-rays confirmed she had pre-existing osteoarthritis, and the described squatting activity aggravated the pre-existing osteoarthritis. (Ex. #6 at p. 3) Dr. Krause stated the CT arthrogram showed chronic findings and there were no acute findings. (Ex. #6 at p. 3) Dr. Krause opined that Petitioner's pre-existing osteoarthritis was temporarily aggravated when she squatted for prolonged periods of time and that the aggravation of her pre-existing osteoarthritis resolved over time and possibly before she sought treatment for the first time on August 9, 2018. (Ex. #6 at p. 3)

Dr. Krause further opined that Petitioner was back to baseline and that the Euflexxa injections were treating her pre-existing osteoarthritis and work restrictions at this time were not necessary. (Ex. #6 at p. 3-4) Dr. Krause noted Petitioner worked for almost 2 months following the overuse injury and questioned the need for work restrictions as she did not describe any new injury or trauma. (Ex. #6 at p. 4) Dr. Krause stated Petitioner was at maximum medical improvement for the aggravation injury of June 27, 2018. (Ex. #6 at p. 4) Petitioner then did return to work without restrictions.

On March 21, 2019, Petitioner went to the Orthopedic Center for an evaluation. (Ex. #7) She gave a history of working as a custodian, cleaning the floor, being in a squatting position most of the day, denying any specific injury or twisting of the knee, but stating her pain began that day and she has had pain ever since. (Ex. #7) She stated she was diagnosed with mild to moderate arthritis, had a CT scan, tried physical therapy, a brace, cortisone injections and viscos injections but stated none of the treatment helped. (Ex. #7 at p. 1) She also stated she has continued working but has had pain in her knee. She was not using any ambulatory aids and x-rays showed no fractures or stress fractures. She was assessed with right knee pain and primary osteoarthritis of the right knee. (Ex. #7) She indicated she thought she had a meniscal tear, and an ultrasound was offered with an option of an arthroscopic evaluation if her pain persisted.

On April 23, 2019, Petitioner was seen for review of the ultrasound of April 12, 2019, which showed a small Baker's cyst, medial meniscus degenerative change, and possible small peripheral tear. Petitioner continued to work and a possible knee arthroscopy with partial medical meniscectomy was discussed. Petitioner was advised that pain from arthritis would not be expected to improve after a knee scope, but she chose to proceed. (Ex. #7) On May 24, 2019, Dr. Mulshine performed a right knee arthroscopy with a pre-operative diagnosis of degenerative medial meniscal tear and a post-operative diagnosis of chondromalacia of medial femoral condyle and hypertrophic synovium at the medial compartment. (Ex. #7 at p. 6) The operative report showed the ACL and medial and lateral meniscus ligaments were intact and there were no loose bodies or inflammatory changes, but there was Grade 2 and Grade 3 chondromalacia at the patellofemoral joint and the weight bearing portion of the medial femoral condyle. (Ex. #7 at p. 6-7)

On June 11, 2019, Petitioner returned for follow-up stating she was doing well but felt a pop in her kneecap area and had increased pain in her knee since. Petitioner had not returned to work but was walking without ambulatory aids and had full extension and near full flexion on the right. (Ex. #7 at p. 8) Dr. Mulshine instructed her to progress her walking and standing activities, but she may have continued pain from her osteoarthritis. (Ex. #7 at p. 8)

On July 11, 2019, Petitioner returned to Dr. Mulshine and the exam showed she was walking with a limp, but not using ambulatory aids and had full range of motion, no joint line tenderness, no particular tenderness through her calf or thigh, and no notable swelling. The assessment was primary osteoarthritis of right knee, and she may benefit from therapy. Petitioner did not think she was ready for work, but Dr. Mulshine stated he would not be able to keep her off work indefinitely for arthritis pain. (Ex. #7 at p. 10)

On August 8, 2019, Petitioner returned and stated physical therapy had been helping her knee, she did not have as much pain in her knee and was walking better. Dr. Mulshine did not see any swelling and both knees

felt stable to varus and valgus stressing. There was no particular tenderness about her right knee, she had a very slight limp, and symmetric range of motion across both knees. Dr. Mulshine released Petitioner to return to work full duty without restrictions. (Ex. #7 at p. 12) Petitioner testified she returned to work full time full duty at that time and has not returned to see Dr. Mulshine or received any medical treatment since August 8, 2019.

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 June 27, 2018, Petitioner was scrubbing, cleaning, and scraping wax off a school floor and began to have pain in her right knee when she stood up after prolonged squatting. The report of this incident by Petitioner gave the same description and stated this activity was part of her job duties. There was no evidence presented that this activity was not part of Petitioner's job duties. The Arbitrator finds that the accident arose out of and in the course of her employment.

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

The accident date was June 27, 2018 and Petitioner testified that she told the head custodian that her knee was hurting that day but did not fill out an incident report. Petitioner continued to work full time full duty and first sought medical treatment on August 9, 2018. Petitioner continued to work until August 24, 2018 when the principal noticed her limping. Petitioner completed an incident report after telling the principal what happened. The report indicated Petitioner told the head custodian that her knee was hurting but did not say it was because of a work incident. (Ex. #1 at p. 4) Although the report of the incident was beyond the 45-day requirement (58 days), the Arbitrator finds that Respondent was not prejudiced by the delay and timely notice was given.

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

Petitioner first sought medical treatment for right knee pain on August 9, 2018 and x-rays showed no acute abnormalities. (Ex. #2) Petitioner was seen on September 6, 2018 at MOHA where she was assessed with right knee pain. Petitioner saw Dr. Wolters at Springfield Clinic for an orthopedic evaluation and underwent a CT arthrogram. The CT arthrogram showed moderate chondromalacia, but no meniscus tear was seen. (Ex. #4 at p. 9) The assessment was moderately severe right knee medial and patellofemoral compartment chondromalacia. (Ex. #4 at p. 9) Dr. Wolters recommended physical therapy, gave her a cortisone injection and stated surgical intervention would not be necessary. (Ex. #4 at p. 9) Petitioner underwent physical therapy treatments from September 27, 2018 to November 6, 2018 and was discharged from care. Although she exhibited inconsistent pain behaviors, Petitioner was demonstrating normal motion, strength, and balance. (Ex. #5 at p. 25)

On November 9, 2018, Dr. Wolters assessed Petitioner with primary localized osteoarthritis in the right knee and recommended a series of Euflexxa injections, which were administered on November 28th, December 12th and December 21st with the impression given as degenerative arthritis in the right knee. Petitioner did not return to or follow-up with Dr. Wolters after December 21, 2018. (Ex. #4 at p. 18)

On December 10, 2018, Petitioner was seen for an IME by Dr. Krause, who performed a physical exam, reviewed the CT arthrogram, and agreed there was no evidence of meniscal pathology. Dr. Krause obtained x-rays at the time of this visit (AP, lateral, oblique and sunrise views) and assessed Petitioner with pre-existing degenerative joint disease of the right knee primarily in the patellofemoral compartment and an overuse injury with aggravation of her pre-existing osteoarthritis. Dr. Krause stated that Petitioner's history, medical records, CT arthrogram and x-rays confirmed she had pre-existing osteoarthritis, and the described squatting activity aggravated the pre-existing osteoarthritis. (Ex. #6 at p. 3) Dr. Krause stated the findings on the CT arthrogram

were chronic with no acute findings. (Ex. #6 at p. 3) Dr. Krause opined that Petitioner's pre-existing osteoarthritis was temporarily aggravated by her squatting activity on June 27, 2018 but that the aggravation of her pre-existing osteoarthritis had resolved. (Ex. #6 at p. 3)

Dr. Krause stated that Petitioner was at baseline and the Euflexxa injections were treating her pre-existing osteoarthritis and work restrictions were not necessary. (Ex. #6 at p. 3-4) Dr. Krause noted Petitioner worked for almost 2 months following the overuse injury and there was no new injury or trauma to warrant restrictions. (Ex. #6 at p. 4) Dr. Krause stated Petitioner was at maximum medical improvement for the aggravation related to the June 27, 2018 accident. (Ex. #6 at p. 3-4) Petitioner testified she did return to work full time full duty after this exam.

Petitioner continued to work full time full duty without restrictions until March 21, 2019 when she was seen by Dr. Mulshine for right knee pain. Petitioner was assessed with right knee pain and primary osteoarthritis of the right knee. (Ex. #7) Petitioner indicated she had no benefit from injections or physical therapy and thought she had a meniscal tear. An ultrasound was performed, and a possible knee arthroscopy discussed with Petitioner being instructed her that pain from her arthritis would not be expected to improve after a knee scope. (Ex. #7 at p. #4) On May 24, 2019, Dr. Mulshine performed a right knee arthroscopy which showed the ACL and medial and lateral meniscus ligaments were intact, but there was Grade 2 and Grade 3 chondromalacia. (Ex. #7 at p. 6-7)

On June 11, 2019, Dr. Mulshine advised Petitioner she may have continued pain from her osteoarthritis. (Ex. #7 at p. 8) On July 11, 2019, Petitioner was assessed with primary osteoarthritis of the right knee and advised that she could not be kept off work indefinitely for arthritis pain. (Ex. #7 at p. 10) On August 8, 2019, Petitioner was released to return to work full duty without restrictions. (Ex. #7 at p. 12) Petitioner testified that she did return to work full time full duty at that time and has continued to work full time full duty since August 8, 2019.

Based on the medical evidence presented, the Arbitrator finds that Petitioner's condition of ill-being resolved as of December 21, 2018. The Arbitrator finds the findings and opinions of Dr. Wolters and Dr. Krause are persuasive. Dr. Wolters diagnosed Petitioner with moderately severe chondromalacia with no meniscal pathology and prescribed physical therapy and injections and stated surgical intervention was not necessary. Dr. Krause stated that there was no meniscal pathology and the CT arthrogram and x-rays confirmed Petitioner had pre-existing osteoarthritis. Dr. Krause stated that the pre-existing osteoarthritis was temporarily aggravated by the squatting activities of June 27, 2018 and that the aggravation had resolved.

Petitioner returned to work full time full duty and was working full time full duty for 3 months before she went to see Dr. Mulshine on March 21, 2019. She continued to work full time full duty until May 24, 2019 when she underwent an arthroscopic procedure. Dr. Mulshine advised Petitioner prior to surgery that the procedure would not relieve pain from arthritis and subsequently stated he could not keep her off work indefinitely for her arthritis pain. Petitioner gave Dr. Mulshine the information regarding the June 27, 2018 incident, but there was no statement or opinion in his records that causally related this pain or treatment to that event. Petitioner failed to meet her burden of proof that the treatment after December 21, 2018 was causally related to the incident of June 27, 2018.

The Arbitrator finds that Petitioner's condition of ill-being causally related to the incident of June 27, 2018 resolved as of December 21, 2018. The Arbitrator finds that the medical treatment incurred after this date is not causally related and is denied.

L. What temporary benefits are in dispute?

Petitioner claimed entitlement to TTD benefits for the time period of July 1, 2019 through August 8, 2019, which was the only dispute as to this issue. Based on the Arbitrator's finding that Petitioner's condition of ill-being resolved as of December 21, 2018, Petitioner's claim for TTD benefits for this time period is denied.

In support of the Arbitrator's findings relating to (O) the Arbitrator finds the following facts:

Pursuant to Section 8.1(b) of the Act, several factors are to be considered in determining permanent partial disability ("PPD").

With regard to the subsection (i) of Section 8.1(b) no AMA impairment rating was submitted into evidence. As such, no weight will be given to this factor.

With regard to subsection (ii) of Section 8.1(b), occupation of the employee, the Petitioner testified she has continued work in a job that requires stair usage, lifting, using floor cleaners and is physical in nature. As such, the Arbitrator finds this factor weighs in favor of increased permanence.

With regard to subsection (iii) of Section 8.1(b), age, it is noted that Petitioner was 46 years old at the time of the accident. At the time of trial, the Petitioner was 52 years old with a long future of work in a physical occupation. The Arbitrator finds that this factor weighs in favor of some permanence.

With regard to subsection (iv) of Section 8.1(b), future earnings capacity, the Petitioner testified she continues to work full time with merit/scheduled pay increases since her release. The Arbitrator finds this factor weighs in favor of some permanence.

With regard to subsection (v) of Section 8.1(b), involving evidence of disability corroborated by treating medical records, the Arbitrator notes that Petitioner still complained of limping in her final date of service and at the time of trial, she also has consistent pain complaints to her knee. The Arbitrator finds that this factor weighs in favor of increased permanence.

Based on the above factors, the Arbitrator finds that the Petitioner sustained the permanent loss of 10% of the right leg pursuant to Section 8(e)11 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC032616
Case Name	Brian Paliga v. Orland Fire Protection District
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	25IWCC0441
Number of Pages of Decision	5
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Michael Rom, David Guerra
Respondent Attorney	Nicole Breslau

DATE FILED: 11/3/2025

/s/ Marc Parker, Commissioner

Signature

DISSENT

/s/ Christopher Harris, Commissioner

Signature

☐ 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

Petitioner, a 33 y/o firefighter/paramedic, developed left shoulder pain on October 2, 2019 after receiving a flu shot which was administered too high and too posterior in his shoulder. Immediately after the shot, Petitioner felt pain in his shoulder, worse than any from previous flu shots he received. The pain continued and worsened over the following days and weeks. He first saw the company doctor, Dr. Wilson, for this condition on October 29, 2019. Dr. Wilson ordered an MRI, diagnosed bursitis and suspected tendonitis, and referred Petitioner to orthopedic physician, Dr. Joy. Petitioner's November 2, 2019 left shoulder MRI revealed severe tendinosis and a preexisting partial tendon tearing, which Respondent's Section 12 physician, Dr. Verma,

opined was unrelated to Petitioner's injury. When Petitioner saw Dr. Joy on November 5, 2019, he prescribed medication and physical therapy, which Petitioner admitted improved, but did not completely resolve, his shoulder symptoms.

The Arbitrator found Petitioner's left shoulder condition of ill-being arose out of and in the course of his employment and awarded him 3% loss of use of the person as a whole, pursuant to §8(d)2 of the Act. The Commission, with one Commissioner dissenting, modified the weight the Arbitrator gave to §8.1b(b) factor (i), Petitioner's reported level of impairment, from "no weight" to "some weight," but otherwise affirmed and adopted the Arbitrator's finding that Petitioner's injury caused the loss of use of 3% body as a whole under §8(d)2 of the Act. The Circuit Court confirmed part of the Commission's decision – our finding that Petitioner's influenza vaccine-related injury arose out of and in the course of his employment.

Pursuant to the Circuit Court's mandate, we now explain the relevance and weight given to each Section 8.1b(b) factor we have reconsidered in arriving at our loss of use of the person as a whole permanent partial disability award. That Section of the Act states that permanent partial disability from injuries occurring after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment from a physician; (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. Having reconsidered these factors, we assign the following relevance and weights to them:

- (i) **Disability impairment rating:** Respondent offered an impairment rating report from Dr. Nikhil Verma, its retained §12 expert. Dr. Verma examined Petitioner one time, on November 28, 2022. Dr. Verma agreed that Petitioner's condition was related to his flu injection and opined it caused bursitis, though he believed that condition to be only temporary. Dr. Verma opined Petitioner's impairment rating for his injury was 0% of the upper extremity, and 0% of the whole person. We find Dr. Verma's impairment rating to be moderately relevant, and give it moderate weight.
- (ii) **Employee's occupation:** Petitioner was employed as a firefighter/paramedic, a job he classified as heavy-duty. He lost no time from work and acknowledged that he received a promotion since his accident. Although Petitioner testified that his shoulder injury has not affected his ability to perform his duties, he also testified that his shoulder pain is still present and caused by certain movements. For these reasons, we find Petitioner's occupation to be moderately relevant, and give it moderate weight.
- (iii) **Employee's age at the time of the injury:** Petitioner was 33 years old at the time of his injury. He has over 30 years of work-life expectancy left during which he will have to endure the effects of his shoulder injury. We therefore find this factor to be moderately relevant, and give it moderate weight.

- (iv) **Future earning capacity:** Petitioner testified that since his accident, he received a promotion and is earning more than he did at the time of his accident. We find this factor to be moderately relevant, and give it moderate weight.
- (v) **Evidence of disability corroborated by the treating records:** When Petitioner first saw Dr. Wilson for his left shoulder injury; that doctor diagnosed bursitis and suspected tendonitis. Petitioner's left shoulder MRI confirmed he had severe tendinosis and an infraspinatus tear with underlying subtle osseous edema. Petitioner was referred to orthopedic surgeon, Edward Joy, who examined Petitioner and found he had a limited shoulder range of motion and a positive Obrien's test. Dr. Joy prescribed medication and ordered physical therapy. On December 11, 2019, Petitioner's physical therapist reported that he still continued to have 4/10 pain with sudden, quick movements. At Petitioner's last doctor's visit on December 17, 2019, Dr. Joy reported that while Petitioner's shoulder mobility had improved, he still had a mildly limited range of shoulder motion, mild pain with flexion arc, and a positive O'Brien's test. Dr. Joy also documented that while Petitioner's shoulder felt improved after physical therapy, by the morning following his therapy session, his symptoms would return. At arbitration, Petitioner testified he still experiences occasional shoulder pain. Dr. Joy recommended a repeat shoulder MRI, which Petitioner never underwent. The Commission finds this factor, (v), to be very relevant, and we give it significant weight.

Prior to his accident, Petitioner had no injuries, symptoms, or treatment involving his left shoulder. Although the pain does not prevent him from performing any of his work duties, it has never completely been resolved. We find Petitioner's testimony to be credible and corroborated by both Dr. Joy's records and the left shoulder MRI report.

The Commission acknowledges that Petitioner never underwent the repeat left shoulder MRI Dr. Joy recommended on December 17, 2019. But based upon Petitioner's testimony regarding his current condition, and the length of time since his last office visit with Dr. Joy, we find it reasonable to infer that at least by the date of the arbitration hearing, if not sooner, Petitioner's condition had stabilized and he had reached maximum medical improvement.

Finally, we acknowledge that our findings related to factors (i) and (iv) could suggest that lesser permanent partial disability award be awarded. However, §8.1b(b) provides that, "No single enumerated factor shall be the sole determinant of disability." After reconsidering: all of the five factors together; Petitioner's un rebutted testimony more than 4 years after his accident that he still experiences a sharp pain in the exact spot where his shot was administered; and the record as a whole, we still conclude that Petitioner's injury caused a 3% loss of use of person as a whole under §8d(2).

19 WC 032616

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IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$836.69 (max rate) per week for 15 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused a 3% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that all else in our November 19, 2024 Decision is 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.

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.

November 3, 2025

MP:mcp
r 9/22/25
68

/s/ Marc Parker

Marc Parker

/s/ Maria E. Portela

Maria E. Portela

DISSENT

I agree with the majority that Dr. Verma’s AMA rating complied with 8.1b(a) of the Act, and further add that any lack of “charts and page references” found by the Arbitrator are not elements which are required pursuant to 8.1b(a). As such, Dr. Verma’s AMA rating should have been afforded some weight by the Arbitrator.

After re-weighing all five factors under Section 8.1(b), and given the circumstances of this specific case, I believe 3% person-as-a-whole is excessive for the injuries alleged, and a 1% loss of a person-as-a-whole would be a more appropriate award. Therefore, I respectfully dissent in part from the majority.

/s/ Christopher A. Harris

Christopher A. Harris

November 3, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC010118
Case Name	Erik Alcaraz-Garcia v. Labor Solutions, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0442
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Adam Rosner
Respondent Attorney	Edward Jordan

DATE FILED: 11/3/2025

/s/Marc Parker, Commissioner

Signature

24 WC 010118

Page 2

The Act provides that when authorization for medical services is denied pursuant to utilization review, the employee then 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 pursuant to subsection (a) is reasonably required to cure or relieve the effects of his or her injury. 820 ILCS305/8.7(i)(4). In this case, Petitioner offered no evidence to show that a variance of the standard of care noted by the UR report was required. Accordingly, the Commission vacates the Arbitrator's award of the expenses incurred for 3 of Petitioner's physical therapy sessions, dated November 14, 2023, November 29, 2023, and November 30, 2023. All else in the Arbitrator's Decision is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 21, 2025, 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.

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

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

November 3, 2025

MP/mcp
o-10/16/25
068

/s/ *Marc Parker*

Marc Parker

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Christopher A. Harris*

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC010118
Case Name	Erik Alcaraz-Garcia v. Labor Solutions, LLC
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Adam Rosner
Respondent Attorney	Edward Jordan

DATE FILED: 3/21/2025

/s/ Nina Mariano, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 18, 2025 4.10%

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Erik Alcaraz-Garcia

Employee/Petitioner

v.

Labor Solutions, LLC

Employer/Respondent

Case # **24** WC **010118**

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 **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **December 23, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the accident date, **September 22, 2023**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$12,312.73 over 21 and 1/7 weeks**; the average weekly wage was **\$582.35**

On the date of accident, Petitioner was **25** years of age, **single** with **1** dependent children.

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

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for medical, 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 and Petitioner's counsel temporary total disability benefits of \$403.88 for 61 and 5/7 weeks, commencing October 18, 2023 through December 23, 2024, as provided in Section 8(b) of the Act.

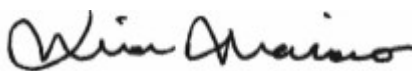
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of Illinois Orthopedic Network, \$17,276.77; Midwest Specialty Pharmacy, \$6,912.61; La Clinica, \$40,235.00; and American Diagnostic MRI, \$9,000.00. Respondent is entitled to a credit for any payments made for medical bills.

The Arbitrator orders Respondent to authorize the bilateral L4-S1 radiofrequency ablation and associated care as recommended by Dr. Mohiuddin.

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

March 21, 2025

occurred, he was in a bent position forward causing his body to twist from as the boxes hit him. Id. at 17-18. Petitioner testified that he felt pain immediately in his neck and high back following the accident. Id. at 18. Petitioner testified that he went home the day of the accident and presented for treatment five days later. Id. at 19. Petitioner testified that during the five days after his work accident and his initial treatment, he started to feel pain in his low back and Respondent gave him a back brace for support. Id. at 19-20.

Summary of Medical Records

On September 27, 2023, Petitioner presented to Physicians Immediate Care with upper back and neck pain. PX1. On physical examination, tenderness to the cervical and thoracic spines were noted. Id. Petitioner was diagnosed with cervicgia and dorsalgia and returned to work with restrictions. Id. Petitioner followed up with Physicians Immediate Care on October 2, 2023 with similar complaints including additional stiffness. Id.

On October 18, 2023, Petitioner presented to Dr. Lemus at La Clinica with head, mid back low back, left shoulder and bilateral rib pain. PX2. At this visit, Petitioner additionally complained of temporary loss of memory from the work accident. Id. Dr. Lemus noted that Petitioner continued to work, but on September 27, 2023, Petitioner could no longer continue to work due to the pain. Id. On physical examination to the spine, Dr. Lemus noted: tenderness and pain to cervical, thoracic and lumbar spines; positive cervical compression test and distraction test; Kemps test positive in lumbar and thoracic; supraspinatus test positive for pain in the left shoulder; and tenderness in his ribs (6-8) with rib compression test. Id. Dr. Lemus recommended MRIs of the cervical spine, thoracic spine, lumbar spine, and left shoulder and placed Petitioner off work. Id. Petitioner completed therapy at La Clinica from October 18, 2023 through February 26, 2024. Id.

On November 16, 2023, Petitioner underwent the recommended MRIs. PX2. The cervical MRI showed disc bulging/protrusion at C5-6, Levoscoliosis; and loss of normal lordosis. Id. The left shoulder MRI showed distal supraspinatus tendonitis and a potential SLAP tear. Id. The thoracic spine MRI showed multilevel disc space narrowing, disc desiccation, and disc bulging with indentation of the thecal sac and flattening or distorting of the cord. Id.

The MRI of the lumbar spine showed: (1) straightening of the lumbar lordosis L1-2-L4-5 with increased L4-5 through L5-S1 lordosis; (2) prominent mild bilateral facet joint effusions at L3-4, trace to mild left greater than right L4-5 and trace to mild L5-S1; (3) L4-5, 2 mm central to far left paracentral disc protrusion with annular fissuring at the apex of the disc. Contact of the bilateral L5 nerve roots. Moderate left, mild right neuroforaminal stenosis. There is mild periarticular edema, interspinous ligamentous edema associated with bilateral facet joint effusions and disc herniation at this level. This indicates associated motion and/or instability. Correlate for signs and symptoms of facet joint syndrome; and (4) L5-S1, 1 mm disc protrusion versus bulge posteriorly eccentric. Mild to moderate constriction of the thecal sac due to prominent epidural fat. Mild bilateral neuroforaminal stenosis. Id.

Following the MRIs, Petitioner presented to Dr. Lipov at Illinois Orthopedic Network on December 4, 2023 where he noted he felt a crack in his neck and back when the boxes struck his

body. Id. Petitioner had subjective complaints of 8/10 neck pain, 7/10 thoracolumbar pain, and 7/10 left shoulder pain. Id. On physical examination, Dr. Lipov noted pain on extension with the cervical spine, pain on palpation of the thoracic spine, pain with extension of the lumbar spine, and left shoulder abduction as painful. Id. Dr. Lipov diagnosed Petitioner with lumbar facet pain and recommended a lumbar facet injection. Id. Petitioner followed up with Dr. Lipov on January 3, 2024 with continued neck and back pain, with his shoulder pain resolved. Id. On February 6, 2024, Petitioner underwent a bilateral L4 to S1 lumbar medial branch nerve block. Id.

On February 17, 2024, Petitioner underwent an independent medical examination (IME) with Dr. Deutsch at the request of Respondent. RX2. At the IME, Petitioner had 8/10 midback pain and 5/10 neck pain. Id. On physical examination, Dr. Deutsch noted tenderness to the cervical, thoracic, and lumbar spine. Id. Dr. Deutsch noted that Petitioner's lumbar movements were very guarded and found positive Waddell signs. Id. Dr. Deutsch reviewed the MRIs and found the cervical and thoracic MRI to be unremarkable with the lumbar MRI showing mild lumbar degenerative changes and no objective findings of any lumbar injury. Id. Dr. Deutsch opined that Petitioner's lumbar complaints are not causally related to his work accident as Petitioner had no lower back complaints initially and there was no mechanism of injury for the lumbar spine. Id. Dr. Deutsch diagnosed Petitioner with a cervical and thoracic contusion as causally related to the work accident. Id. Dr. Deutsch opined Petitioner required no further treatment and could return to work full duty. Id.

Following the injection, Petitioner presented to Dr. Mohiuddin at Illinois Orthopedic Network on February 28, 2024 with 75-80% relief with the pain returning the following day. Id. Petitioner had 7/10 axial back pain. Id. On physical examination, Dr. Mohiuddin noted positive lumbar facet loading bilaterally and tender to palpation mostly around L4-S1 lumbar facets bilaterally. Id. Dr. Mohiuddin noted that Petitioner had ongoing low back pain from work-related injury and that Petitioner reached all diagnostic criteria to proceed with a bilateral L4-S1 RFA. Id. Petitioner followed up with Dr. Mohiuddin on April 1, 2024 with continued low back pain. Id.

On September 12, 2024, Petitioner presented to Dr. Mohiuddin noting that Petitioner continued working after the work accident, causing his pain to worsen in his neck, midback, and low back. Id. Dr. Mohiuddin noted similar physical examination findings, and that physical therapy had provided moderate relief to Petitioner. Id. Dr. Mohiuddin reviewed Dr. Deutsch's IME report and that he disagreed with his opinions in that Petitioner's lumbar MRI showed multiple disc protrusions, physical examination findings and pain complaints were consistent, and that he continued to recommend the L4 to S1 RFA. Id. Petitioner last followed up with Dr. Mohiuddin on October 23, 2024 with a cracking sensation along the neck and midback and similar subjective complaints. Id.

Pre-Accident Medical

On July 15, 2023, Petitioner presented to Community First Medical Center after a motorcycle accident with frontal headache, lip swelling and left ankle pain. PX5. Petitioner underwent CT scans of his head and cervical spine and x-rays of his pelvis and ankle. Id. Petitioner was discharged the same day from the hospital. Id.

Accident Report

At trial, Petitioner was shown the accident report (RX5) that he filled out following the work accident. TX20. Petitioner testified that he filled out a pain diagram on the accident report, which included his head, neck and spine. Id. at 21. Petitioner testified he marked off the middle of his spine. Id. at 21.

Petitioner testified that he injured his left ankle from a motorcycle accident and the hospital also performed an x-ray of his neck. Id. at 29. Petitioner testified he did not injure his left shoulder or low back from the motorcycle accident. Id. at 29. Petitioner testified that he did not have any follow ups after the motorcycle accident as he felt fine. Id. at 30. Petitioner testified that he did not miss any work from the motorcycle accident and continued working full duty. Id. at 30. Petitioner testified that between his motorcycle accident on July 15, 2023 and his work accident on September 23, 2023, he did not have any accidents involving his neck, back, or left shoulder. Id. at 30.

Testimony of Petitioner

Petitioner testified that after he was placed on light duty restrictions by Physicians Immediate Care, he returned to work for Respondent from September 22, 2023 through October 17, 2023. Id. at 23. Petitioner testified that Respondent did not respect his work restrictions, and he continued to perform his previous work emptying and placing boxes on an assembly line. Id. at 23-24. Petitioner testified he would lift the boxes and put them over his shoulder to place on the line. Id. at 24. Petitioner testified that he would be lifting the boxes off the pallet anywhere from ground to chest level depending on where the boxes were stacked. Id. at 24. Petitioner testified that he would have to use a stepladder to reach for the higher boxes. Id. at 25. Petitioner testified that he had to empty out five to six pallets per day, between 200 to 250 boxes per shift. Petitioner testified the boxes weighed approximately fifty pounds. Id. at 26.

Petitioner testified that from September 22, 2023 through October 17, 2023, his pain continued to increase in his low back, high back, and neck as he continued to work. Id. at 26. Petitioner testified that his low back pain began after the work accident when he continued to lift boxes at work. Id. at 26. Petitioner testified that his low back pain was his primary complaint when he was performing physical therapy at La Clinica. Id. at 27. Petitioner testified that the injection helped for one day when the pain returned. Id. at 28.

Petitioner testified that he did not have any issues with his left shoulder or back prior to the work accident. Id. at 31. Petitioner testified that he has not had any intervening accidents involving his neck, left shoulder, and back since the work accident. Id. at 31. Petitioner testified that he has not worked for Respondent or any other employer since October 18, 2023. Id. Petitioner testified as of the date of trial, his low back was his primary complaint and that he felt like his back was “compressed” and feels a needle sensation. Id. at 32. Petitioner testified that his condition has affected his motor skills and sleep. Id. at 32.

Cross Examination of Petitioner

Petitioner testified that during the motorcycle accident, he hit his head on the windshield of a car while not wearing a helmet. Id. at 35. Petitioner testified that he was not diagnosed with a concussion as a result of the motorcycle accident. Id. at 35. Petitioner testified that the motorcycle accident was six weeks prior to the work accident. Id. at 36. Petitioner testified that he worked for Respondent for around three or four years, and for the apple company approximately two months. Id. at 38.

Petitioner testified that a box did not strike his low back, but he twisted when the box fell on his left shoulder. Id. at 38-39. Petitioner testified that he told the doctors at Physicians Immediate Care where he felt pain. Id. at 40. Petitioner testified that he only presented to Physicians Immediate care twice. Id. at 41-42. Petitioner testified that he was referred to La Clinica by his Attorney. Id. at 42. Petitioner testified that he went to La Clinica for physical therapy three or four times a week, around fifty-six sessions. Id. at 43. Petitioner testified he did not undergo any injections for his neck or left shoulder. Id. at 45. Petitioner testified that he did not apply for jobs after he was released with restrictions, but that he went to Respondent and was told Respondent would notify him about a return to work. Id. at 45-46. Petitioner testified that he presented the work restriction note to Respondent two or three days after the physician gave him the restrictions. Id. at 46-47.

Petitioner testified that he is awaiting approval of the injection. Id. at 47-48. Petitioner testified that he has not taken medication since around April of 2024. Id. at 49. Petitioner testified that he worked full duty for Respondent from September 27, 2023 through October 17, 2023. Id. at 49.

Redirect Examination of Petitioner

Petitioner testified that he had worked for Labor Solutions as a forklift operator for three or four years prior to the work accident. Id. at 51. Petitioner testified that his job duties as a forklift driver did not change from before the work accident to after, as he still had to lift boxes, carry boxes, and place boxes on the assembly line. Id. at 51.

Recross Examination of Petitioner

Petitioner testified that he worked at a packaging company for Windex and Ziploc products and a company called J&H prior to working for the apple company. Id. at 52.

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). The burden of proof is on a claimant to establish the elements of his right to compensation, and unless the evidence considered

in its entirety supports a finding that the injury resulted from a cause connected with the employment, there is no right to recover. *Board of Trustees v. Industrial Commission*, 44 Ill. 2d 214 (1969).

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

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

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

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

Petitioner testified that on September 22, 2023, Petitioner was moving a pallet with boxes filled with apples when boxes fell from the top of the stack, striking Petitioner in the left shoulder and head, causing his body to twist. The accident report Petitioner filled out corroborates Petitioner's testimony that boxes hit Petitioner on the head and shoulders. RX5. Petitioner acknowledges that Petitioner testified three boxes hit him, while the medical records and accident report indicate two boxes. However, Petitioner's testimony as a whole is consistent with the medical records and accident report about how the accident occurred and which body parts were struck. Therefore, the Arbitrator deems Petitioner's testimony regarding the work accident as truthful and credible. Further, the parties stipulated to accident and accident is not at issue.

Petitioner initially treated at Physicians Immediate Care on September 27, 2023 and October 2, 2023 with neck and mid back pain. Petitioner presented to Dr. Lemus on October 18, 2023 with head, neck, mid back, low back, left shoulder, and bilateral rib pain. Petitioner continued to treat with La Clinica in physical therapy for several months. Petitioner then started treatment with Dr. Lipov and Dr. Mohiuddin.

Throughout Petitioner's treatment with La Clinica, Dr. Lipov, and Dr. Mohiuddin, Petitioner's symptoms were consistent with axial low back pain, left shoulder pain, and cervical pain. Petitioner's left shoulder pain had resolved as of January 3, 2024. As Dr. Mohiuddin opined, Petitioner's lumbar MRI showed multiple disk protrusions, most significant at L4-5; cervical MRI showed a disk bulge at C5-C6, and thoracic MRI showed multilevel disk space narrowing and disk desiccation. PX2, at 48. Dr. Mohiuddin correlated Petitioner's subjective complaints and MRI findings with his physical examination findings i.e. positive tenderness to palpation in the cervical, thoracic, and lumbar region as well as positive cervical and lumbar facet loading test.

Dr. Deutsch diagnosed Petitioner with thoracic and cervical contusions as a result of the work accident. Dr. Deutsch's IME was completed on February 17, 2024, approximately eight months prior to Petitioner's last visit with Dr. Mohiuddin. Petitioner's testimony and the medical records corroborate that Petitioner's thoracic and cervical conditions persisted well beyond Dr. Deutsch's IME, supporting that Petitioner's symptoms were more significant than a contusion. Respondent offered no second IME or addendum report by Dr. Deutsch.

Respondent contends that Petitioner did not injure his low back from the work accident. Dr. Deutsch opined that Petitioner did not sustain an injury to his lumbar spine as the first report of pain related to the low back was not until his initial treatment at La Clinica. Petitioner acknowledges that the first medical note that mentions low back pain specifically is Petitioner's initial visit at La Clinica on October 18, 2023. However, Petitioner's accident, testimony, and the opinions of Petitioner's treating physicians all support that Petitioner sustained a lumbar injury as a result of the work accident.

With respect to the mechanism of injury, Petitioner testified that he was in a bent forward position when the boxes struck him in the left shoulder and head. This caused Petitioner to "twist" from the impact of the boxes. Petitioner credibly testified that he initially felt pain in his upper back, neck, and left shoulder, which is corroborated by the accident report and initial medical records. The Arbitrator notes that a direct impact to the head and left shoulder accompanied by "twisting" of Petitioner's body is a competent mechanism to cause injury to Petitioner's back, neck, and left shoulder.

Petitioner credibly testified that following the accident, he continued to work for Respondent through October 18, 2023, which is corroborated by RX6. Even though Petitioner had light duty restrictions, Petitioner continued to work in a full duty capacity. Petitioner's job included lifting and carrying fifty pounds boxes throughout his shift. Additionally, Petitioner had to lift approximately 200 to 250 boxes per shift. Petitioner testified that his low back pain continued to worsen following the work accident and while performing this heavy manual labor job.

Respondent offered no rebuttal witness to refute Petitioner's testimony regarding his job activities following the work accident.

In the September 12, 2024 report, Dr. Mohiuddin noted:

I did discuss in detail with the patient the incident that occurred on 09/22/2023. He does state, at that time, boxes fell and hit his head and shoulder, causing a cracking sensation as well as dizziness in his neck and upper back. Following the incident, he did seek medical attention, and he states he was given work restrictions. However, his employer told him these restrictions were only advised and not necessary. He then continued to work for the next month, which Dr. Deutsch also notes in his report. He does state he continued working regardless of his pain and continued to lift boxes weighing 55 to 60 pounds. He states his neck and midback pain worsened, and his lower back pain began worsening as well.

PX3, at 47-48.

Dr. Mohiuddin's account of how Petitioner's low back pain began is consistent with Petitioner's testimony at trial. Petitioner had a twisting injury from the work accident, and his low back pain worsened from continuing to lift/carry heavy boxes at Respondent. As Dr. Mohiuddin references, Dr. Deutsch does indicate that Petitioner continued to work for the Respondent following the work accident, but Dr. Deutsch fails to consider the type of work Petitioner was performing after the work accident. As Dr. Mohiuddin had a more accurate and detailed history regarding the onset of Petitioner's low back symptoms, the Arbitrator finds Dr. Mohiuddin as more credible and persuasive than Dr. Deutsch.

Further, Petitioner credibly testified that he had no low back issues prior to the work accident. Petitioner had a motorcycle accident approximately six weeks before the work accident, where he had an injury to his left ankle. The records from Community First Medical Center substantiate that Petitioner had no injury to his low back as a result of the motorcycle accident. The Arbitrator notes that evidence supports Petitioner had no back issues prior to the work accident and began as a result of Petitioner's work accident.

Additionally, the medical records and testimony support that Petitioner had no issues with his neck or left shoulder prior to the work accident.

Dr. Deutsch did note positive Waddell signs, however, none of Petitioner's treating physicians noted symptom magnification or positive Waddell signs.

Therefore, the Arbitrator finds Petitioner's left shoulder, thoracic, cervical, and lumbar conditions to be causally related to the work accident.

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

The Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary for the September 23, 2023 work accident. This is supported by Petitioner's medical records from Physicians Immediate Care, Dr. Lemus, Dr. Lipov, and Dr. Mohiuddin. The Arbitrator finds that the medical opinions and treatment plans set forth in the medical records from Petitioner's treating physicians are both credible and appropriate for his work-related injuries. As Petitioner's treating physicians that saw Petitioner on several occasions, they were the most equipped physicians to diagnose Petitioner and recommend treatment based on Petitioner's subjective complaints and their own objective findings.

Respondent introduced a utilization review, authored by Dr. Sassoon, dated February 8, 2024, addressing whether Petitioner's physical therapy was reasonable and necessary. RX3. The services Dr. Sassoon reviewed were for physical therapy related to the cervical spine. Id. Dr. Sassoon opined that only ten sessions of physical therapy were warranted from October 19, 2023 through November 13, 2023. Id. Dr. Sassoon reasoned that there was insufficient evidence to demonstrate any functional improvement resulting from the initial physical therapy sessions. Id.

Dr. Sassoon only addressed physical therapy services to the *neck*. Petitioner's physical therapy at La Clinica consisted of treatment for his cervical spine, lumbar spine, thoracic spine, and left shoulder. Dr. Sassoon did not consider body parts other than the cervical spine when rendering his opinion. Respondent offered no other utilization reviews to address Petitioner's lumbar spine, thoracic spine, or left shoulder. Further, Petitioner testified that the physical therapy helped alleviate his neck symptoms. TX27.

The Arbitrator notes that the treatment at each visit of La Clinica addressed multiple body parts and therefore does not find Respondent's utilization review as credible or persuasive.

Having already found Petitioner's current conditions of ill-being being causally related to the work accident, the Arbitrator orders Respondent to pay Petitioner and Petitioner's counsel for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

- Illinois Orthopedic Network, \$17,276.77
- Midwest Specialty Pharmacy, \$6,912.61
- La Clinica, \$40,235.00
- American Diagnostic MRI, \$9,000.00

The parties stipulate that Respondent is entitled to a credit for any payments made for medical bills, which is reflected in the exhibits.

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

Petitioner was initially placed on work restrictions by Concentra on September 27, 2023. Petitioner continued working for Respondent through October 17, 2023. On October 18, 2023, Petitioner was taken completely off work by Dr. Lemus. Throughout the remainder of Petitioner's treatment, he was placed off work or on work restrictions by his treating physicians. Petitioner credibly testified that Respondent never offered him a light duty position after October 17, 2023. Petitioner attempted to go back to work for Respondent with restrictions but was never called to return.

Having already found Petitioner's current condition of ill-being being causally related to the work accident, the Arbitrator finds Respondent liable for 61 and 5/7 weeks of TTD benefits (October 18, 2023 through December 23, 2024) at the weekly rate of \$403.88 to be paid directly to Petitioner and Petitioner's counsel. Respondent is entitled to a credit of \$0 in TTD already paid.

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

The Arbitrator finds that Petitioner is entitled to the bilateral L4-S1 radiofrequency ablation as recommended by Dr. Mohiuddin. Petitioner attempted all treatment available to him including physical therapy, medication, back brace, and a lumbar medial branch block. Dr. Mohiuddin noted that Petitioner had 75% to 80% relief from the lumbar medial branch block on February 6, 2024. Petitioner testified that he had a day of relief from the injection before the pain returned, consistent with the medical records. Therefore, Dr. Mohiuddin recommended the RFA, which is the next step per ODG guidelines.

Therefore, as the Arbitrator found that Petitioner's current condition of ill-being was caused by the September 22, 2023, work-related accident, the Arbitrator finds that Respondent is liable for the bilateral L4-S1 radiofrequency ablation and follow-up care as recommended by Dr. Mohiuddin.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	13WC016951
Case Name	Bernardo Cardona v. A Q L, Dreambag Inc & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0443
Number of Pages of Decision	30
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	John Eliasik
Respondent Attorney	Danielle Curtiss

DATE FILED: 11/4/2025

/s/Amylee Simonovich, Commissioner

Signature

13WC016951

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[illegible]

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BERNARDO CARDONA,

Petitioner,

VS.

No. 13WC016951

A.Q.L., DREAMBAG, INC., ROBERT CHOI, &
ILLINOIS STATE TREASURER as *ex-officio*
custodian of the Injured Workers' Benefit Fund,

Respondents.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent Illinois 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 jurisdiction, notice of hearing, liability of the IWBF, and res judicata, and being advised of the facts and law, finds the Commission was never revested with jurisdiction subsequent to the Circuit Court's dismissal order dated May 2, 2018. Accordingly, the Commission vacates the decision of the Arbitrator, dismisses Petitioner's case, dismisses the Petition for Review, and hereby renders no decision on the underlying merits of this case on review.

Procedural Background

On May 22, 2013, Petitioner filed an Application for Adjustment of claim, naming A.Q.L. as Employer/Respondent, and alleging injury on March 14, 2013. After amendment of the Application, Petitioner named A.Q.L., Robert Choi, Dreambag, Inc., and the IWBF as Employer/Respondents.

13WC016951

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Petitioner requested a hearing before Arbitrator Mason on October 18, 2016. At that time only Petitioner and the Injured Workers Benefit Fund appeared, and Arbitrator Mason conducted a preliminary review of the notices of hearing to absent parties and continued the hearing to December 19, 2016, for notice to the Employer/Respondents.

On December 19, 2016, Arbitrator Mason performed another preliminary review of the notice of hearing to the absent parties and allowed Petitioner to proceed ex-parte. Present at the hearing were Petitioner and his counsel, and the IWBf by an Assistant Attorney General. Testimony was given by Petitioner and exhibits were accepted.

On January 20, 2017, Arbitrator Mason issued her Decision. Petitioner timely filed a Petition for Review, and on July 31, 2017, the Commission issued a Decision affirming and adopting the Decision of the Arbitrator.

On September 5, 2017, Petitioner filed for Administrative Review of the Commission's Decision. The IWBf filed a motion pursuant to section 2-619(a)(1) and 2-619(a)(5) of the Code of Civil Procedure (735 ILCS 5/2-619(a)) to have the review dismissed as untimely filed. Petitioner subsequently filed a motion to voluntarily dismiss with remand to the Commission. On May 2, 2018, the Circuit Court entered an Order granting the IWBf's motion to dismiss as the administrative review was untimely filed. The Circuit Court denied Petitioner's motion to remand as it lacked subject matter jurisdiction.

Following the Circuit Court dismissal of the review and its denial of Petitioner's motion to remand to the Commission, Petitioner nevertheless filed a motion on August 28, 2018, seeking to reinstate the case before the Commission as to A.Q.L. and Dreambag, Inc. The Commission heard arguments and briefs were submitted. On June 8, 2020, the Commission issued an Order, with one Commissioner dissenting, vacating the prior Commission decision and the Arbitrator's decision, and remanded the case to an Arbitrator to conduct a new trial on the merits. Over the written objection of the IWBf, the matter proceeded to trial for a second time on December 12, 2024, and a Decision was issued on February 10, 2025. Respondent IWBf then timely filed a Petition for Review of that Decision of the Arbitrator.

Findings

The Commission finds that the Circuit Court decision on May 2, 2018, dismissing the Petitioner's review as not being timely filed, was final, without any remand to the Commission. The Circuit Court expressly denied Petitioner's motion to remand and the Commission was never re-vested with jurisdiction following the finality of the Circuit Court dismissal of this matter in its entirety.

Accordingly, to the extent that the Arbitrator found he had jurisdiction to proceed with the hearing on December 12, 2024, and issue the Decision of February 10, 2025, which is currently on review, the Commission reverses the Arbitrator's Decision on that threshold issue. In addition,

13WC016951

Page 3

the Commission dismisses Petitioner's case on jurisdiction and vacates the Decision of February 10, 2025.

IT IS THEREFORE ORDERED BY THE COMMISSION that since the Commission was never revested with jurisdiction after May 2, 2018, all Commission and Arbitration Decisions and Orders entered after that date are stricken.

IT IS FURTHER ORDERED BY THE COMMISSION that the Petition for Review currently before the Commission is hereby dismissed.

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.

November 4, 2025

O: 9/30/25

AHS/ps

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	13WC016951
Case Name	Bernardo Cardona v. A Q L, Dreambag Inc & IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Daniel Swanson, Arbitrator

Petitioner Attorney	John Eliasik
Respondent Attorney	Danielle Curtiss

DATE FILED: 2/10/2025

/s/ Daniel Swanson, Arbitrator

 Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 4, 2025 4.16%

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

Bernardo Cardona

Employee/Petitioner

v.

**A.Q.L.Dreambag, Inc., Robert Choi and
Illinois State Treasurer as ex officio Custodian
of the Injured Workers' Benefit Fund**

Employer/Respondent

Case # **13** WC **16951**

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 **Daniel Swanson**, Arbitrator of the Commission, in the city of **Chicago**, on **December 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: Notice of Hearing, Jurisdiction, Insurance Coverage

FINDINGS

On **March 14, 2013**, Respondent, Robert Choi, *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$23,400.00**; the average weekly wage was **\$450.00**.

On the date of accident, Petitioner was **58** 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 **\$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**Jurisdiction and Notice of Hearing**

Respondents, Robert Choi and Injured Workers' Benefit Fund are subject to Jurisdiction and were given adequate notice of the hearing on December 12, 2024. The Arbitrator finds that AQL and Dreambag, Inc. are both non-entities.

The Arbitrator finds that Dreambag, Inc. was dissolved as a corporation on June 11, 2010. Robert Choi is a sole proprietor who employed Petitioner and did business under the names A.Q.L. and Dreambag, Inc. (Respondent's Exhibits 2 and 3).

Insurance Coverage

The Arbitrator finds that Robert Choi did not have a policy of Workers' Compensation insurance at the time of the accident on March 14, 2013 pursuant to the NCCI Affidavit dated August 11, 2023. (Petitioner's Exhibit PB).

Employer-Employee Relationship

The Arbitrator finds that an employer-employee relationship existed between Petitioner and Respondent, Robert Choi, only. Robert Choi operated as a sole proprietorship. Although, Robert Choi did business under the names A.Q.L. and Dreambags, Inc. on March 14, 2013, they are both non-entities with no legal standing.

Liability of Injured Workers' Benefit Fund

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 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 Robert Choi fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act.

Robert Choi shall reimburse the Injured Workers' Benefit Fund for any compensation obligations of the employer/sole proprietor, Robert Choi, that are paid to Petitioner from the Injured Workers' Benefit Fund

Res Judicata and Remand for New Trial

Although the original Commission Decision appeared to be a final decision after Petitioner's appeal was dismissed by the Circuit Court on May 2, 2018, the Commission majority gave the Petitioner a legal "mulligan" or second bite at the apple based upon the fact that Petitioner's counsel failed to give adequate notice of the trial on December 19, 2016 to A.Q.L. and Dreambag, Inc. On February 21, 2019, Petitioner filed a Motion to Reinstate the Proceedings against A.Q.L. and Dreambag, Inc. The matter was fully briefed by the parties and argued before the Commission.

On June 8, 2020, the Commission vacated both its decision entered on July 31, 2017 and the Arbitrator's decision entered on January 20, 2017 and remanded the case to the Arbitrator for a new trial on the merits because it found that unresolved issues existed against two named respondents rendering it void. "It is incumbent on the Commission to enter a decision which addresses all issues and all respondents for a claimed date of accident, following a duly conducted trial. Multiple hearings against multiple respondents arising out of one date of accident is simply not contemplated by the Act."

The Arbitrator notes that the Injured Workers' Benefit Fund did not file an interlocutory appeal of a decision, which is not ripe or a final order, to the Circuit Court of Cook County of the June 8, 2020 Commission Decision and Opinion on Review challenging it based upon the defense of Res Judicata. Moreover, the Arbitrator finds that it had no other option than follow the June 8, 2020 order of the Commission majority vacating both the Commission Decision dated July 31, 2017 and voiding the Arbitrator decision entered on January 20, 2017 and conducting a new trial on the merits.

The trial was duly conducted after the remand and proofs were closed on December 12, 2024.

Temporary Total Disability

Respondent, Robert Choi, shall pay Petitioner temporary total disability benefits of **\$300.00/week** for **9 and 1/7** weeks, commencing **March 15, 2013** through **May 17, 2013**, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of **\$0.00** for temporary total disability benefits that have been paid.

Medical benefits

Respondent, Robert Choi, shall pay the \$376.00 bill from ECP Services (Petitioner's Exhibit E, PX 4), subject to the fee schedule, the \$1,936.07 bill from Alex Orthopedics, LLC (Petitioner's Exhibit E, PX 6), subject to the fee schedule, and the \$1,685.88 in prescription expenses from EqMD (Petitioner's Exhibit E, PX7)

Respondent, Robert Choi, shall be given a credit of \$0.00 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.

Permanent Partial Disability

The Arbitrator awards Petitioner permanent partial disability equivalent to 30% loss of use of the left middle finger, representing 11.4 weeks of benefits under Section 8€ of the Act.

Penalties and Fees

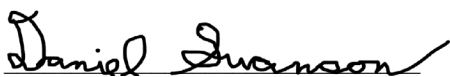
The Arbitrator declines to find Robert Choi liable for penalties and fees, despite the fact that a colorable argument exists that the failure to secure workers' compensation insurance, pay benefits to his injured employee, Bernardo Cardona, or appear for hearing, after receiving notice pursuant to the Act and Rules, could be construed as unreasonable and vexatious behavior.

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.

Respondent, Robert Choi, shall pay the \$376.00 bill from ECP Services (Petitioner's Exhibit E, PX 4), subject to the fee schedule, the \$1,936.07 bill from Alex Orthopedics, LLC (Petitioner's Exhibit E, PX 6), subject to the fee schedule, and the \$1,685.88 in prescription expenses from EqMD (Petitioner's Exhibit E, PX7)

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Signature of Arbitrator

February 10, 2025

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

ILLINOIS WORKERS’ COMPENSATION COMMISSION

BERNARDO CARDONA,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 13 WC 16951
A.Q.L., Robert Choi, Dreambag,Inc and	)	
Illinois State Treasurer as ex officio Custodian	)	
of the Injured Workers’ Benefit Fund	)	
	)	
	)	
Respondents.	)	

FINDINGS OF FACT

This matter proceeded to hearing on December 12, 2024 in Chicago, Illinois before Arbitrator Daniel Swanson on Petitioner’s Request for Hearing under the Illinois Workers’ Compensation Act. As this was an IWBF case, all issues are in dispute. Arbitrator’s Exhibit 1.

PROCEDURAL BACKGROUND

The case was previously tried on December 19, 2016 and an Arbitration Decision was entered against Robert Choi by Arbitrator Mason. The Arbitrator found that Petitioner failed to provide adequate notice of the hearing to Respondents A.Q.L. and Dreambag, Inc. The Petitioner did establish adequate notice as to Robert Choi and the Injured Worker Benefit Fund but offered no evidence indicating that Robert Choi lacked workers’ compensation coverage at the time of the accident on March 14, 2013. Therefore, Arbitrator Mason found that the Injured Workers’ Benefit Fund was not implicated in this case.

The Arbitration Decision was affirmed and adopted by the Illinois Workers’ Compensation Commission. The Petitioner appealed to the Circuit Court of Cook County. However, the appeal was dismissed because it was untimely filed 32 days after receipt of the Decision and Opinion on Review by the Illinois Workers’ Compensation Commission.

Petitioner filed a Motion to Reinstate on February 21, 2019 against A.Q.L. and Dreambag, Inc The Injured Worker Benefit objected to the Reinstatement of the cases against A.Q.L. and Dreambag, Inc.. The matter was fully briefed by the parties and argued before the Commission.

The Commission found that there were unresolved issues against two named Respondents, A.Q.L. and Dreambag, Inc. because the Arbitrator found that Petitioner failed to provide adequate notice

to A.Q.L. and Dreambag, Inc. Further the Commission stated that “Multiple hearings against multiple respondents arising out of one date of accident is simply not contemplated by the Act.” Therefore, the Commission vacated the original Arbitration and Commission Decisions as void and remanded the matter to the Arbitrator for a new trial on the merits against all named Respondents.

The new trial was duly conducted on the merits and proofs were closed on December 12, 2024. The Petitioner, Bernardo Cardona, appeared and testified briefly through a Spanish language interpreter, that he had testified under oath previously at a hearing held on December 19, 2016.

The Petitioner placed into evidence the transcript of the hearing, treating medical records and bills conducted on December 19, 2016 plus proof that notice was sent to Robert Choi at his last known address and an August 11, 2023 Affidavit from NCCI, reflecting that Robert Choi did not have a policy of Worker’s Compensation Insurance.

The Injured Worker Benefit Fund did not call any witnesses. However, the Injured Workers’ Fund offered the Business Entity Searches for A.Q.L. and Dreambag, Inc. (Respondent, Injured Workers’ Benefit Fund, Exhibits 2 and 3). Additionally, the Fund offered the transcript of Proceedings on Arbitration dated April 30, 2024 with exhibits containing all Decision and Orders entered in the original matter after the December 19, 2016 trial.

Jurisdiction and Notice of the December 12, 2024 Hearing to Named Respondents

The Petitioner mailed notice of the December 12, 2024 hearing to Robert Choi at his last known address at 4534 W. North Avenue, Chicago, Illinois 60639.

Section 7020.70(b) of the Index to Rules Governing Practice Before the Illinois Worker’s Compensation Commission lays out the notice requirements for a hearing:

...notices of motion shall be in writing and shall be served upon the Arbitrator or Commissioner and the attorney of record of all other parties or, where any other party is not represented by counsel, upon the party himself, by personal or office delivery or by *mailing of a copy of the notice*...15 days preceding the status call day set forth in the notice. *Id*

The Respondents, Robert Choi and Injured Workers’ Benefit Fund are subject to Jurisdiction of the Illinois Workers’ Compensation Act and were given adequate notice of the hearing on December 12, 2024.

Also, the evidence submitted by the Injured Workers’ Benefit Fund reflected that Dreambag, Inc. was dissolved as a corporation on June 11, 2010, according to a Secretary of State Business Entity Search (Respondent’s Exhibit 3). Additionally, the Secretary of State Business Entity Search reflected that A.Q.L. did not exist as a corporation or business entity in Illinois and therefore is a non-entity. (Respondent’s Exhibits 2).

The Petitioner testified that to his knowledge he was hired to work for the business owned by Robert Choi. His immediate supervisor was an individual named Antonio.

Further, Petitioner testified that the business had three or four names, one of which was ‘Dreambags.’ When his counsel asked him whether another name was “AQL”. He said “no.

Robert Choi was a sole proprietor, who employed Petitioner and did business under the names AQL and Dreambag, Inc

Insurance Coverage

Robert Choi did not have Workers’ Compensation Insurance coverage on March 14, 2013.

Petitioner offered evidence that Robert Choi did not have insurance coverage through n Certified Affidavit from Topaz Bertino of NCCI dated August 11, 2023, (Exhibit PB).

Job Duties

At the trial on December 19, 2016, the Petitioner testified that he worked for “Mr. Robert” Choi as a machine repairman on March 14, 2013. Petitioner testified that he was 58 years old at the time of the accident. The business manufactured military uniforms and was owned by Choi. (*Petitioner’s Exhibit E, Trial Transcript from December 19, 2016 at pages 25 ,48*).

Average Weekly Wage

The Petitioner testified that he earned \$21 per hour and and worked 30 hours per week. He testified that he was paid in cash with taxes deducted. On Arbitrator’s Exhibit 1, the Request for Hearing Form, Petitioner alleged an average weekly wage of \$450 and annual earnings of \$23,400.

No pay or tax documents were submitted into evidence.

Prior Medical Condition

There was no evidence that the Petitioner had any prior conditions related to his left middle finger before the March 14, 2013 accident.

Accident

On December 19, 2016, the Petitioner testified, with no objection from the Injured Workers' Benefit Fund, that he sustained a work-related accident on March 14, 2013 at around 4:00pm or 4:30 pm. At that time he was operating a machine at a business that manufactured military uniforms and leather products. The business was located on South Western Avenue in Blue Island, Illinois. He had been working for approximately six months at the business before the accident to his left middle finger.

At the time of the injury on March 14, 2013, the Petitioner was operating a "pressure machine" when Robert Choi cut off the electricity, which caused the Petitioner's machine to lose power and the press mechanism on the machine came down onto the Petitioner's left middle finger, crushing and severing a small section of the fleshy tip of that finger.(Petitioner's Exhibit E at pages 25-28).

Summary of Medical Records

After the left middle finger was tip was crushed by the press after the power supply was cut off, the Petitioner testified that he screamed and picked up the severed tissue.(Petitioner's Exhibit E at page 28).

Mr. Choi apologized and left. Petitioner's Exhibit E, P. 28) Antonio went for an ice pack, and Petitioner called 911 with his cellphone. (Petitioner's Exhibit E, P. 31-32) An ambulance arrived and

transported him to the Emergency department at Metro South Hospital. (Petitioner's Exhibit E, P. 32) A Blue Island Fire Department run sheet reflects that the paramedics arrived at the "Libby Building" located at 13636 Western Avenue on March 14, 2013 and encountered Petitioner in front of the building with a crushed left middle fingertip. (Petitioner's Exhibit E, PX2)

Petitioner testified and his records indicate that he was administered an injection in his finger, the wound was cleaned, stitched, and dressed and his finger was splinted. (Petitioner's Exhibit E, PX3). Petitioner testified that two days later he went to the emergency room at St. Mary and Elizabeth Medical Center (hereinafter referred to as "St. Mary and Elizabeth") in excruciating pain. (Petitioner's Exhibit E, PX5). At the hospital, he reported that he had not filled the prescriptions given to him at the prior emergency room because he was waiting for Worker's Compensation approval. (Petitioner's Exhibit E, PX 5). His medical records indicate that Petitioner was administered pain medication, his wound was cleaned and dressed again and he was advised to seek follow-up care. (Petitioner's Exhibit E, PX5).

On March 18, 2013, Petitioner saw Dr. Snitovsky at Alex Orthopedics. (Petitioner's Exhibit E, PX 6) The doctor recorded a consistent history of the work accident and subsequent treatment. (Petitioner's Exhibit E, PX 6) He noted that Petitioner reported taking Narco and Clindamycin. (Petitioner's Exhibit E, PX 6) He obtained repeat left hand x-rays, which showed a "comminuted distal phalanx fracture of the third digit." (Petitioner's Exhibit E, PX 6) He prescribed a supported device for the finger along with therapy. (Petitioner's Exhibit E, PX 6) He dispensed Tramadol, Mobic, and Protonix and directed Petitioner to return to him in one week. (Petitioner's Exhibit E, PX 6).

Therefore, based upon the totality of the circumstances, the Arbitrator finds that Robert Choi was operating under the Illinois Workers' Compensation Act on March 14, 2013 as a sole proprietor

On March 22, 2013, Petitioner underwent an initial therapy evaluation at Alex Orthopedics. (Petitioner's Exhibit E, PX 6) The therapist's history reflects that on March 14, 2013, Petitioner was placing a part in a machine without sensors and the machine started on its own, causing the press to come down and "slam" Petitioner's left middle finger. (Petitioner's Exhibit E, PX 6) The therapist noted that Petitioner complained of throbbing pain in the finger along with pain and numbness in the left wrist. (Petitioner's Exhibit E, PX

6) She recommended a total of twelve therapy visits. (Petitioner's Exhibit E, PX 6) Petitioner saw Dr. Snitovsky again on March 25, 2013, with the doctor removing the sutures and obtaining repeat x-rays, which showed interval healing. (Petitioner's Exhibit E, PX 6)

Petitioner attended two more therapy sessions, on March 25 and 27, 2013. (Petitioner's Exhibit E, PX 6) The therapy consisted of ultrasound, electrical stimulation, ice applications, and passive range of motion exercises. (Petitioner's Exhibit E, PX 6) On March 27, 2013, the therapist reviewed the wound care instructions with Petitioner and noted that Petitioner demonstrated "poor dexterity with pasta shell pick up as well as poor strength and ROM with putty squeeze." (Petitioner's Exhibit E, PX 6) She recommended that Petitioner continue therapy. (Petitioner's Exhibit E, PX 6)

Petitioner testified that he did not undergo additional therapy at Alex Orthopedics after March 27, 2013 due to lack of insurance coverage and funds. (Petitioner's Exhibit E, P. 38) About a month later, he went to Stroger Hospital at the recommendation of the doctor at Alex Orthopedics. (Petitioner's Exhibit E, P. 38)

The Stroger Hospital records reflect that Petitioner underwent repeat left middle finger x-rays on April 29, 2013 and saw an orthopedic surgeon, Dr. Brown, on several dates thereafter. (Petitioner's Exhibit E, PX 8) A note dated June 19, 2013, authored by a certified nurse practitioner, reflects that Petitioner underwent surgery, consisting of a "partial tuft amputation and revision," on May 29, 2013 and that Petitioner was now "doing well." (Petitioner's Exhibit E, PX 8) No operative report appears in the record. The nurse practitioner described Petitioner's fingernail as "intact". (Petitioner's Exhibit E, PX 8) She noted a partial amputation of the tip of the finger. (Petitioner's Exhibit E, PX 8) She indicated Petitioner was able to make a composite fist and complained of hypersensitivity at the tip of the finger. (Petitioner's Exhibit E, PX 8). She discharged Petitioner from care. (Petitioner's Exhibit E, PX 8)

Petitioner testified originally that he continued to undergo therapy at Stroger Hospital on an occasional basis. (Petitioner's Exhibit E, P. 38) Petitioner did not offer any records concerning his ongoing care. The last Stroger Hospital treatment note in evidence is the June 19, 2013 note referenced in the preceding paragraph.

The petitioner testified that he eventually resumed working for a different employer in March, 2014. (Petitioner's Exhibit E, P.43-44)

Petitioner testified that his affected finger hurts if he accidentally bumps the finger against a surface. (Petitioner's Exhibit E, P. 45) He would rate the pain resulting from such contact at 7 on a scale of 1 to 10. (Petitioner's Exhibit E, P.44) If he grips an object for a long time, he experiences pain. (Petitioner's Exhibit E, P. 44-46) For example, if he is at work, holding and polishing a piece for fifteen minutes he feels pain. (Petitioner's Exhibit E, P.44-46) He began using vices to stabilize objects due to his grip weakness. (Petitioner's Exhibit E, P.44-46) He is not able to use the affected finger when he types. (Petitioner's Exhibit E, P.44-46). Before the accident he considered himself to be left-handed but now he tries to use his right hand to write. (Petitioner's Exhibit E, P.46)

Testimony of Petitioner at the December 19, 2016 Hearing

The December 19, 2016, trial transcript was entered into evidence over the Injured Workers' Benefit Fund's objection. (Petitioner's Exhibit E). At the December 19, 2016, trial, Petitioner had testified that he worked for "Mr. Robert" Choi as a machine repairman on March 14, 2013. *Id.* at 25; 48. Petitioner testified that he was 58 years old at the time of the accident. The business manufactured military uniforms and was owned by Choi. *Id.* The business had three or four other names, of which Petitioner recalled "IMC Manufacturing" and "Dream Bags." *Id.* at 26. Petitioner did not recall the business being called "A.Q.L."

Petitioner worked at the business for six months and was paid \$21.00 per hour, cash. *Id.* at 27; 57. He worked four hours per day, six days per week for 30 hours a week total. *Id.* at 51.

On March 14, 2023, Petitioner was working at 33500 South Western Avenue in Blue Island when he injured his left middle finger while he was repairing a machine. *Id.* at 28. Between 4:00 p.m. and 4:30 p.m., while Petitioner was working on a leather stamping machine, the owner cut the power causing the machine to stop and Petitioner's left middle finger to be crushed inside. *Id.*

Petitioner immediately informed his supervisor Antonio. *Id.* at 31. Antonio got ice for Petitioner from the ice machine. *Id.*

Petitioner's Current Condition

On December 12, 2024, the Petitioner testified briefly about an unrelated subsequent left hand injury suffered at home.(Transcript at. page 37). Other than that, the Petitioner confirmed on cross-examination that he has received no further treatment to his left middle finger since 2014 after the March 14, 2013 injury. (Transcript at. page 44).

Additionally, the Petitioner testified briefly through a Spanish language interpreter, that when using his left middle finger when typing, he has shaking or inability to use the finger. (Transcript at page 36). Moreover, Petitioner complained of a complete loss of sensation on his middle finger. (Transcript at page 37).

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; 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 Petitioner only testified briefly to relay that he testified in the original December 19, 2016 hearing under oath. The Arbitrator had little chance to observe his demeanor, but notes that he was confused about a subsequent unrelated injury to his left hand. During cross-examination, the Petitioner testified that his last treatment for the left middle finger occurred in 2014. (T. 44). 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.

(A) In support of the Arbitrator's decision regarding whether Respondent was acting under and subject to the Illinois Workers' Compensation or Occupational Diseases Act, the Arbitrator makes the following conclusions of law:

This case is complicated because Robert Choi was apparently operating as a dissolved corporation Dreambag, Inc. (Respondent IWBf's Exhibit 3). A dissolved corporation is a non-entity and

cannot exercise powers granted by statute, such as contract, sue and be sued, or employ individuals. 805 ILCS 5/3.10. Additionally, A.Q.L is also a non-entity. (Respondent IWBFF's Exhibit 2). There is no record of AQL on the Secretary of State website. Thus, no liability can attach to Dreambag, Inc. or A.Q.L. since they are non-entities with no legal standing.

Robert Choi was given adequate notice of the hearing on December 12, 2024 as notice was sent to Robert Choi's last known address, 4534 W. North Avenue, Chicago, Illinois 60639. Although the Injured Workers' Benefit Fund disputes that personal jurisdiction exists under the Workers' Compensation Act over Robert Choi, it provided no legal support that it was required to do anything more than send notice to Robert Choi's last known address as adequate notice of the hearing on December 12, 2024.

It is undisputed that Petitioner obtained personal jurisdiction over Respondents Robert Choi and the Injured Workers' Benefit Fund at the December 19, 2016 trial. Petitioner's counsel admitted that he did nothing more than send notice of the December 12, 2024 hearing to Robert Choi at his last known address. Moreover, Petitioner asserts that is all he is required to do to effectuate service pursuant to 7020.70(b) of Rules Governing Practice.

Furthermore, Dreambag, Inc. and A.Q.L. are non-entities. Robert Choi can do business under fictitious names or dissolved corporate name, if he so chooses. However, doing business under another name does not create an entity distinct from the person operating the business. Therefore, Robert Choi is personally liable for all of his obligations as a sole proprietor.

Petitioner's attempt at notice to A.Q.L. was a fool's errand because A.Q.L. was at all times a non-existing corporation. (IWBF Respondent's 3). A corporation does not exist until "the filing of the articles of incorporation by the Secretary of State." 805 ILCS 5/2.15. As A.Q.L. was never incorporated or licensed to transact business in this State, it does not exist. As such, it could not employ, hire, or otherwise retain Petitioner. It was at all times relevant a nonentity (not a natural or legal person) and could not legally act in any manner. "In Illinois, corporations are strictly creatures of statute; only duly and actually incorporated corporations possess and can exercise those powers granted by statute, such as the right to sue and be sued, complain and defend, in its corporate name, or employ other individuals." *See* 805 ILCS 5/3.10. Petitioner could not serve or provide notice to A.Q.L., nor could A.Q.L. employ the Petitioner, as it did not and never has existed.

Further, Respondent Dreambag, Inc. dissolved on June 11, 2010, prior to the March 14, 2013, date of accident. (Rx. 6). Just as with a non-existent entity, a dissolved entity cannot be an employer. Even if Petitioner claims that Respondent Choi was doing business as either AQL or Dreambag, Inc., further proceedings against either of them would be an exercise in futility. The Illinois Supreme Court has noted that:

a sole proprietorship has no legal identity separate from that of the individual who owns it. The sole proprietor may do business under a fictitious name if he or she chooses. However, doing business under another name does not create an entity distinct from the person operating the business. The individual who does business as a sole proprietor under one or several names remains one person, personally liable for all his or her obligations. A sole proprietor may hire others, with whom the proprietor enters into the relation of employer and employee, or principal and agent.

Vernon v. Schuster, 179 Ill. 2d 338, 347-348 (1997).

Therefore, even if the Arbitrator found that Robert Choi was doing business as A.Q.L. or Dreambag, Inc., Robert Choi would be personally liable as a sole proprietor.

Respondents, Robert Choi and Injured Workers' Benefit Fund are subject to Jurisdiction of the Illinois Workers Compensation Act and were given adequate notice of the hearing on December 12, 2024. The Arbitrator finds that AQL and Dreambag, Inc. are both non-entities.

The Arbitrator finds that Dreambag, Inc. was dissolved as a corporation on June 11, 2010. Robert Choi is a sole proprietor who employed Petitioner and did business under the names A.Q.L. and Dreambag, Inc. (Respondent's Exhibits 2 and 3).

Furthermore, Robert Choi failed to appear for trial on December 12, 2024 pursuant to notice and a valid ex-parte hearing was conducted against him.

(B) In support of the Arbitrator's decision regarding whether there was an employee-employer relationship, the Arbitrator makes the following conclusions of law:

The Arbitrator finds that Petitioner and Robert Choi had an employment relationship as of March 14, 2013. Petitioner testified credibly that Robert Choi, via his agent, Antonio, responded to his newspaper advertisement and that he essentially auditioned for a job by going to a designated workplace and demonstrating his skills as a machine repairman. The petitioner further testified that other candidates appeared on the same date but that only he was hired. The petitioner testified that Choi set his schedule and he was not allowed to work for other employers. The work Petitioner performed was "in the nature of" Choi's business in that he maintained and operated machines that were used to fabricate the goods that Robert Choi sold.

The Arbitrator, having applied the "right to control" and "nature of the work" tests set forth in *Roberson v. Industrial Commission*, 225 Il.2d 159(2007), finds that Petitioner was Robert Choi's employee at the time of the accident.

(C) In support of the Arbitrator's decision regarding whether an accident occurred that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator makes the following conclusions of law:

The Arbitrator finds that Petitioner met his burden of proof on the issue of causation. Petitioner denied injuring his left middle finger at any time before or after this accident. There is no reason for the Arbitrator to question this denial. Petitioner also credibly testified to a traumatic event in which the press came down on his finger. The medical records fully support the Petitioner's account of the accident.

(D) In support of the Arbitrator's decision regarding the date on which the accident occurred, the Arbitrator makes the following conclusion of law:

Petitioner testified and his medical records indicate that he was injured at work on March 14, 2013. The Respondent has not presented any contrary evidence. The Arbitrator finds that the Petitioner was injured on March 14, 2013.

(E) In support of the Arbitrator's decision regarding whether timely notice of the accident was given to Respondent, the Arbitrator makes the following conclusions of law:

The Arbitrator finds that Petitioner established timely notice to his employer. Petitioner testified that Robert Choi was in his immediate vicinity at the time of the accident and, in fact, caused the accident by turning off the power. No contrary evidence was presented. Also, the supervisor, Antonio was informed of the accident and got Petitioner ice .

The Arbitrator finds that Petitioner established timely notice to his employer. Petitioner testified that Robert Choi was in his immediate vicinity at the time of the accident and, in fact, caused the accident by turning off the power. No contrary evidence was presented.

(F) In support of the Arbitrator's decision regarding whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator makes the following conclusions of law:

Consistent with his testimony, Petitioner's medical records reflect that he suffered a crush injury to the distal phalanx of his left middle finger involving a fracture in the tuft of the third digit with surrounding soft tissue laceration and permanent scarring as a result of an accident with a leather stamping press. Petitioner testified that the bone in the distal phalanx of his left middle finger was crushed into pieces in the accident and has never completely healed. Respondent has offered no contrary evidence. Since the accident, he continues to experience pain and tingling along with limited range of motion of his injured finger and limited grip strength.

For these reasons, the Arbitrator finds that the Petitioner's current condition of ill being is causally related to the injury.

(G) In support of the Arbitrator's decision regarding Petitioner's earnings, the Arbitrator makes the following conclusion of law:

The petitioner testified that his earnings for the fifty-two weeks preceding the injury were \$23,400.00. Respondent did not present any contrary evidence. The petitioner testified his schedule varied somewhat but he always worked 30 hours per week. The petitioner further testified he was paid \$21.00 an hour in cash. The petitioner's average weekly wage is \$450.00.

(H) In support of the Arbitrator's decision regarding Petitioner's age at the time of the accident, the Arbitrator makes the following conclusion of law:

The petitioner testified that he was fifty-eight years old at the time of the accident. Respondent presented no contrary evidence. Based on the foregoing, the Arbitrator finds that Petitioner was fifty-eight years old at the time of the accident.

(I) In support of the Arbitrator's decision regarding Petitioner's marital status at the time of the accident, the Arbitrator makes the following conclusion of law:

The petitioner testified that he was single at the time of the accident. Respondent did not present any contrary evidence. Based on the foregoing, the Arbitrator finds that the Petitioner was single at the time of the accident.

(J) In support of the Arbitrator's decision whether the medical services that were provided to the Petitioner were reasonable and necessary, and whether Respondent paid all appropriate charges for all reasonable and necessary services, the Arbitrator makes the following conclusions of law:

Petitioner seeks an award of medical and prescription expenses charged by the following providers: Blue Island Fire Department (PX 2), Metro South Medical Center (PX 3), ECP Services (PX 4), Saints Mary and Elizabeth Hospital (PX 5), Alex Orthopedics (PX 6), EqMD (PX 7), and John H. Stroger Jr. Hospital (PX 8).

The Arbitrator, having reviewed all of the foregoing exhibits, declines to award the bills from Blue Island Fire Department, Metro South Medical Center, Saints Mary and Elizabeth Hospital and John H. Stroger

Hospital since all of these bills show various adjustments and/or charity write-offs resulting in zero balances.

The Arbitrator does award Petitioner the \$376.00 bill from ECP Services, subject to the fee schedule. This bill relates to physician services provided at Metro South Medical Center on March 14, 2013. The Arbitrator also awards Petitioner the \$1,936.07 bill from Alex Orthopedics, LLC, subject to the fee schedule. This bill relates to offices visits and therapy provided between March 18 and March 27, 2013. The Arbitrator further awards Petitioner prescription expenses in the amount of \$1,685.88 charged by EqMD for various drugs prescribed by Dr. Snitovsky on March 18, and March 25, 2013. This award is not subject to the fee schedule since it involves medication.

(K) In support of the Arbitrator's decision regarding the amount due for temporary total disability benefits, the Arbitrator makes the following conclusions of law:

On the Request for Hearing form, Petitioner claimed he was temporarily totally disabled from March 15, 2013 through May 17, 2013. The Arbitrator finds credible Petitioner's testimony as to the instructions he received from Emergency Room personnel on March 14, and 16, 2013. While no specific work restrictions appear in the Emergency Room records, it is clear that hospital personnel recommended additional care on both the 14th and 16th. The Arbitrator views Petitioner's left middle finger injury as unstable as of those dates. *Interstate Scaffolding v. IWCC*, 236 Ill.2d 132 (2010).

It is also clear that, on March 16, 2013, personnel at Saint Mary of Nazareth Hospital expressed concern about wound care and the possibility of infection.

The Arbitrator finds credible Petitioner's testimony from December 16, 2016 that he was told he could work only if he could avoid contaminating his finger, which was at that point only partially sutured. The IWBF raised no objection to Petitioner's testimony on this point. The Saint Mary records also reflect that Petitioner was instructed to keep his finger elevated as much as possible. This instruction is not consistent with many types of employment. Also credible was Petitioner's testimony that he presented to Antonio on several occasions after the accident, requesting re-employment, only to be rebuffed.

The Arbitrator awards temporary total disability benefits at a rate of \$300.00 per week for 9 and 1/7 weeks.

(L) In support of the Arbitrator's decision regarding the nature and extent of Petitioner's injury, the Arbitrator makes the following conclusion of law:

Because the injury occurred after September 1, 2011, The Arbitrator looks to Section 8.1(b) of the Act in assessing the nature and extent of Petitioner's injury. That section sets forth five factors to be considered in determining permanency, with no single factor to be given more weight than any other. The Arbitrator views the first enumerated factor, any AMA impairment rating, as inapplicable since no such rating is in evidence. As for the second and third factors, occupation and age, the Arbitrator finds that Petitioner was a machine repairman who was 59 years old as of the accident. The Arbitrator assigns weight to these factors. The Arbitrator views Petitioner as an older worker who used his hands to repair and operate machinery. The injury involved a finger on Petitioner's dominant left hand. With respect to the fourth factor, future earning capacity, there is no clear evidence that the injury affected Petitioner's income level. Petitioner testified he eventually resumed working for a different employer in March, 2014. He did not claim any diminution of earnings but he did testify to having difficulty performing aspects of his current job due to his injury. As for the fifth and final factor, objective evidence of disability corroborated by the treatment records, the Arbitrator initially notes the x-ray results. Dr. Snitovsky read the films as showing a comminuted distal phalanx fracture. The Arbitrator also notes that, according to a nurse practitioner, Petitioner underwent surgery, consisting of a partial distal tuft amputation, at Stroger Hospital on May 29, 2013. Postoperatively, on June 19, 2013, this nurse practitioner described the nail as intact and described "comminuted bone at tip of DIP." (Petitioner's Exhibit E, PX 8). The Arbitrator was not provided with a copy of the operative report, or any post-operative x-rays,

In addition to the foregoing, the Arbitrator considers Petitioner's testimony both at the December 19, 2016 and December 12, 2024 hearings as to the pain he experiences when he bumps the affected finger and the manner in which his injury has affected his ability to grip and stabilize objects.

Having considered all of the above, the Arbitrator awards the Petitioner permanency equivalent to 30% loss of use of the left middle finger, equivalent to 11.4 weeks of benefits under Section 8(e) of the Act.

(F) In support of the Arbitrator's decision regarding whether Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator makes the following conclusions of law:

Consistent with his testimony, Petitioner's medical records reflect that he suffered a crush injury to the distal phalanx of his left middle finger involving a fracture in the tuft of the third digit with surrounding soft tissue laceration and permanent scarring as a result of an accident with a leather stamping press. Petitioner testified that the bone in the distal phalanx of his left middle finger was crushed into pieces in the accident and has never completely healed. Respondent has offered no contrary evidence. Since the accident, he continues to experience pain and tingling along with limited range of motion of his injured finger and limited grip strength.

For these reasons, the Arbitrator finds that the Petitioner's current condition of ill being is causally related to the injury.

(G) In support of the Arbitrator's decision regarding Petitioner's earnings, the Arbitrator makes the following conclusion of law:

The petitioner testified that his earnings for the fifty-two weeks preceding the injury were \$23,400.00. Respondent did not present any contrary evidence. The petitioner testified his schedule varied somewhat but he always worked 30 hours per week. The petitioner further testified he was paid \$21.00 an hour in cash. The petitioner's average weekly wage is \$450.00.

(H) In support of the Arbitrator's decision regarding Petitioner's age at the time of the accident, the Arbitrator makes the following conclusion of law:

The petitioner testified that he was fifty-eight years old at the time of the accident. Respondent presented no contrary evidence. Based on the foregoing, the Arbitrator finds that Petitioner was fifty-eight years old at the time of the accident.

(I) In support of the Arbitrator's decision regarding Petitioner's marital status at the time of the accident, the Arbitrator makes the following conclusion of law:

The petitioner testified that he was single at the time of the accident with no dependent children. Respondent did not present any contrary evidence. Based on the foregoing, the Arbitrator finds that the Petitioner was single at the time of the accident.

(J) In support of the Arbitrator's decision whether the medical services that were provided to the Petitioner were reasonable and necessary, and whether Respondent paid all appropriate charges for all reasonable and necessary services, the Arbitrator makes the following conclusions of law:

Petitioner seeks an award of medical and prescription expenses charged by the following providers: Blue Island Fire Department (PX 2), Metro South Medical Center (PX 3), ECP Services (PX 4), Saints Mary and Elizabeth Hospital (PX 5), Alex Orthopedics (PX 6), EqMD (PX 7), and John H. Stroger Jr. Hospital (PX 8).

The Arbitrator, having reviewed all of the foregoing exhibits, declines to award the bills from Blue Island Fire Department, Metro South Medical Center, Saints Mary and Elizabeth Hospital and John H. Stroger Hospital since all of these bills show various adjustments and/or charity write-offs resulting in zero balances.

The Arbitrator does award Petitioner the \$376.00 bill from ECP Services, subject to the fee schedule. This bill relates to physician services provided at Metro South Medical Center on March 14, 2013. The Arbitrator also awards Petitioner the \$1,936.07 bill from Alex Orthopedics, LLC, subject to the fee schedule. This bill relates to offices visits and therapy provided between March 18 and March 27, 2013. The Arbitrator further awards Petitioner prescription expenses in the amount of \$1,685.88 charged by EqMD for various drugs prescribed by Dr. Snitovsky on March 18, and March 25, 2013. This award is not subject to the fee schedule since it involves medication.

(K) In support of the Arbitrator's decision regarding the amount due for temporary total disability benefits, the Arbitrator makes the following conclusions of law:

On the Request for Hearing form, Petitioner claimed he was temporarily totally disabled from March 15, 2013 through May 17, 2013. The Arbitrator finds credible Petitioner's testimony as to the instructions he received from Emergency Room personnel on March 14, and 16, 2013. No specific work restrictions appear in the Emergency Room records.

The Arbitrator finds credible Petitioner's testimony from December 16, 2016 that he was told he could work only if he could avoid contaminating his finger, which was at that point only partially sutured. The

IWBF raised no objection to Petitioner's testimony on this point. The Saint Mary records also reflect that Petitioner was instructed to keep his finger elevated as much as possible. This instruction is not consistent with many types of employment. Also credible was Petitioner's testimony that he presented to Antonio on several occasions after the accident, requesting re-employment, only to be rebuffed.

The Arbitrator awards temporary total disability benefits at a rate of \$300.00 per week for 9 and 1/7 weeks.

(L) In support of the Arbitrator's decision regarding the nature and extent of Petitioner's injury, the Arbitrator makes the following conclusion of law:

Because the injury occurred after September 1, 2011, The Arbitrator looks to Section 8.1(b) of the Act in assessing the nature and extent of Petitioner's injury. That section sets forth five factors to be considered in determining permanency, with no single factor to be given more weight than any other. The Arbitrator views the first enumerated factor, any AMA impairment rating, as inapplicable since no such rating is in evidence. As for the second and third factors, occupation and age, the Arbitrator finds that Petitioner was a machine repairman who was 59 years old as of the accident. The Arbitrator assigns weight to these factors. The Arbitrator views Petitioner as an older worker who used his hands to repair and operate machinery. The injury involved a finger on Petitioner's dominant left hand. With respect to the fourth factor, future earning capacity, there is no clear evidence that the injury affected Petitioner's income level. Petitioner testified he eventually resumed working for a different employer in March, 2014. He did not claim any diminution of earning capacity but he did credibly testify to having difficulty performing aspects of his current job due to his injury. As for the fifth and final factor, objective evidence of disability corroborated by the treatment records, the Arbitrator initially notes the x-ray results. Dr. Snitovsky read the films as showing a comminuted distal phalanx fracture. The Arbitrator also notes that, according to a nurse practitioner, Petitioner underwent surgery, consisting of a partial distal tuft amputation, at Stroger Hospital on May 29, 2013. Postoperatively, on June 19, 2013, this nurse practitioner described the nail as intact and described "comminuted bone at tip of DIP." (Petitioner's Exhibit E, PX 8).

In addition to the foregoing, the Arbitrator considers Petitioner's consistent testimony both at the December 19, 2016 and December 12, 2024 hearings as to the pain he experiences when he bumps the

affected finger and the manner in which his injury has affected his ability to grip and stabilize objects..(Transcript at page 38 and Petitioner's Exhibit A at page 44 from testimony on December 19, 2016).

(M) In support of the Arbitrator's decision regarding whether Penalties and Fees should be imposed upon Respondents

The Petitioner did not file a petition for penalties and fees. The Arbitrator declines to find Robert Choi liable for penalties and fees, despite the fact that a colorable argument exists that the failure to secure workers' compensation insurance, pay benefits to his injured employee, Bernardo Cardona, or appear for hearing, after receiving notice pursuant to the Act and Rules, could be construed as unreasonable and vexatious behavior.

Moreover, any award of penalties against the Injured Workers' Benefit Fund would be completely inappropriate.

(N) In support of the Arbitrator's decision whether Respondent's are due any credit, the Arbitrator makes the following conclusions:

The Arbitrator finds that neither Respondent, Robert Choi nor the Injured Workers' Benefit Fund paid any benefits to Petitioner, so the issue of credit due is moot.

(O) In support of the Arbitrator's decision regarding liability of Injured Workers' Benefit Fund:

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 Attorney General. This award is hereby entered against the Injured Workers' Benefit Fund to the extent permitted and allowed under Section 4(d) of this Act. In the event Robert Choi fails to pay the benefits, the Injured Workers' Benefit Fund has the right to recover the benefits due and owing the Petitioner pursuant to Section 5(b) and 4(d) of this Act.

The Arbitrator has previously found that with respect to the non-fund Respondents, Petitioner has established adequate notice of the December 12, 2024 hearing only as against Robert Choi. Furthermore, The Arbitrator finds that Robert Choi did not have a policy of Workers' Compensation insurance at the time of the accident on March 14, 2013 pursuant to the NCCI Affidavit dated August 11, 2023. (Petitioner's Exhibit Petitioner's Exhibit B).

Section 4(d) of the Act clearly states that "moneys in the Injured Workers' Benefit Fund shall be used only for payment of workers' compensation benefits for injured employees when the employer has failed to provide coverage as determined under paragraph (d) and has failed to pay the benefits due the injured employee." Therefore, because the accident is compensable and the award to Petitioner for benefits is only against Robert Choi, the Arbitrator finds that the injured Workers' Benefit Fund is implicated or liable insofar as this award is concerned, based upon the crystal clear language of Section 4(d) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC001200
Case Name	Steven Valentin v. WKS Restaurant Group
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0444
Number of Pages of Decision	21
Decision Issued By	Kathryn Doerries, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Rich Lenkov

DATE FILED: 11/7/2025

/s/ Amylee Simonovich, Commissioner

Signature

DISSENT

/s/ Kathryn Doerries, Commissioner

Signature

24WC001200

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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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEVEN VALENTIN,

Petitioner,

vs.

NO: 24 WC 001200

WKS RESTAURANT GROUP,

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 temporary total disability, and 19(l), 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 February 25, 2025 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.

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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 \$15,900.00. 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.

November 7, 2025

O: 09/09/25

AHS/ma

051

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

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

PARTIAL CONCURRENCE AND DISSENT

I partially concur with the majority's decision affirming the award of TTD benefits and penalties under section 19(l) in this case. For the reasons set forth below, I disagree with the Arbitrator's analysis addressing the notice and timeliness of the motion for penalties, and I would commence the start date of the section 19(l) penalties on November 11, 2024, rather than the Arbitrator's earlier date of October 1, 2024.

The issues in dispute were limited to TTD benefits from October 1, 2023 through the date of hearing and Petitioner's motion for penalties based on non-payment of TTD benefits. Respondent objected to the motion as untimely because the motion was served on January 15, 2024, the day before the hearing. In response to the objection, Petitioner's attorney indicated the following:

MR. JEROME: Your Honor, the penalty - the petition for penalties did not arise until the most recent conversations with opposing counsel where they have refused to provide lost time benefits in spite of our deposition being completed and most recently their doctor's deposition being completed which continue to constitute the off work status of my client. So, the short notice was not a surprise to them as this was discussed with them whenever we were trying to confirm whether they would or would not pay those lost time benefits. So they have been well aware that I would file a penalty petition and I was giving them an opportunity to pay those benefits.

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So it is not undue surprise. We did not know, at least confirm until right before this trial that they were not going to pay those lost time benefits. So we would ask that the penalty petition be considered at the discretion of the Court.

Respondent did not voice any disagreement with the reported past discussions concerning TTD benefits having taken place and Petitioner's intention to seek penalties.

Petitioner's motion sought penalties under sections 19(l), 19(k), and fees under section 16. The Arbitrator awarded section 19(l) penalties in the amount of \$3,240.00, representing \$30 per day for 108 days. No penalties were awarded under sections 19(k) and 16. In his Conclusions of Law, the Arbitrator determined there was no impropriety with the penalties motion being filed one day before the hearing. The Arbitrator noted that the statutory provisions authorizing the assessment of penalties under sections 19(l), 19(k), and 16 "have no prerequisite that Petitioner file a Motion for Penalties prior to the trial." (Arbitration Decision at 8) The Arbitrator further relied on section 9020.70 of the Commission's Rules which recognizes that motions can be made either before or during an Arbitration hearing. I respectfully disagree with this analysis as I believe notice is required prior to trial.

Section 9020.60 of the Commission's Rules provides the following:

All motions, except motions made during an Arbitration or Review hearing, motions for a continuance of cases in the regular review call, and petitions filed under Section 19(h) and/or Section 8(a) of the Act must be accompanied by a Commission form entitled Notice of Motion and Order and must be served on the Arbitrator or Commissioner and all other parties in accordance with subsection (b). All such motions must set forth the date on which the moving party will appear before the Arbitrator or Commissioner to present the motion and must include the type of motion and nature of the relief sought. A Notice of Motion and Order not accompanied by the motion may be stricken. (Emphasis added.) 50 Ill. Adm. Code 9020.70.

While Rule 9020.70 authorizes the Arbitrator to consider some motions brought at the time of trial, the rule does not identify which types of motions can be brought at the time of trial and it does not in my opinion authorize the bringing of motions for penalties at the time of trial. Petitioner did not cite any legal authority supporting the filing of motions for penalties at the time of hearing. Conversely, I find support to the contrary. See *Negrete vs. Slurry System Inc.*, 11 IWCC 0401; 2011 Ill. Wrk. Comp. LEXIS 372, where the Commission affirmed the Arbitrator's denial of penalties because the claimant "failed to file a motion for penalties before trial and respondent offered to pay the back TTD benefits after a lengthy pre-trial conference, which occurred on the same date of trial." (Emphasis added.) See also *Giachetti vs. Northern Illinois University*, 17 IWCC 721; 2017 Ill. Wrk. Comp. LEXIS 647, where the Commission affirmed the denial of penalties based on both claimant's late filing of the motion on the day of trial and the absence of unreasonable, vexatious or bad faith conduct by the employer. Additionally, the Notice

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of Motion and Order form, adopted by the Commission as form IC04 (revised 4/11), sets forth the types of motions frequently filed at the Commission with corresponding boxes to be checked to indicate the type of motion being filed and served on the opposing party. The list of motions set forth on the form Notice of Motion and Order includes motions for fees under section 16 and penalties under sections 19(l) and 19(k). It stands to reason that motions for penalties are to be filed in advance of trial, presented at the status call, and then set for hearing. The types of motions that are occasionally presented at the time of trial include agreed motions, motions to consolidate, motions to exclude witnesses from the hearing room, motions to bifurcate the proceedings, and other miscellaneous types of motions concerning the management of the case. I do not agree that Rule 9020.70 allows the Commission to consider motions for penalties under section 19(l) if never filed until trial or shortly before trial.

Furthermore, section 19(l) requires that a written demand for payment of benefits under section 8(a) or section 8(b) be tendered to the employer as a prerequisite for obtaining an award for penalties, and further provides the employer with a 14-day period to respond with a written explanation setting forth “the reason for the delay.” (820 ILCS 305/19(l).) The required written demand coupled with the 14-day response period thereby precludes the initial filing of a motion seeking section 19(l) penalties during trial. In *Theis vs. Illinois Workers' Comp. Comm'n*, the Appellate Court rejected the claimant’s argument that the requirement for the requisite demand is satisfied by the completion of the Request for Hearing at the commencement of trial. The Court declared that, “The act of submitting medical bills into evidence during arbitration is not the same as tendering them to the employer for payment.” *Theis*, 2017 IL App (1st) 161237WC, P23. In *Anders vs. Industrial Comm'n*, 332 Ill. App. 3d 501, 773 N.E.2d 746 (2002), the Appellate Court held that the required submission of medical bills also applies to sections 19(k) and 16 of the Act. And in *Berndt vs. Illinois Workers' Comp. Comm'n*, 2025 IL App (3d) 240361WC-U, the Appellate Court reaffirmed its prior holdings requiring claimants demand payment and submit medical bills to the employer before penalties can be pursued. “Although section 19(k) does not explicitly provide that an employee must submit his medical bills to the employer before he can obtain penalties for the employer's failure to pay them, common sense dictates that result.” *Id.* at P53. The requirement for tendering a demand applies equally to petitions seeking penalties for non-payment of TTD benefits. See 820 ILCS 305/19(l), which expressly applies to benefits claimed “under Section 8(a) or Section 8(b).” See also, *Theis*, *supra*, where the Court noted that section 19(l) penalties apply to the delayed payment of medical expenses and the delayed payment of TTD benefits. *Theis*, 2017 IL App (1st) 161237WC, P20. Based on the foregoing, I disagree with the Arbitrator’s analysis finding motions for penalties under section 19(l) can be filed for the first time during trial.

Notwithstanding the above, I would nevertheless find notice was proper and timely in the case at bar for the reason that Petitioner *previously filed* a penalties motion for the disputed TTD benefits. It is accepted practice for the Commission to take judicial notice of its own records. See e.g., *Fergasun vs. Lowes*, 15 IWCC 310, 2015 Ill. Wrk. Comp. LEXIS 311. The CompFile system shows Petitioner filed a petition for penalties on September 26, 2024, filed under the consolidated case number, No. 23 WC 26772, to be presented at the status call on November 15, 2024. The

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CompFile system shows no action was taken on the motion; however, it is clear from the filed motion and Respondent's 19(b) response that the identical dispute over Petitioner's work status was raised at that time and thus Respondent was therefore on notice that penalties were at issue, or could potentially be raised again as an issue, when the case ultimately proceeded to trial in January 2025. See *O'Farrell vs. City of Chicago*, 21 IWCC 0033; 2021 Ill. Wrk. Comp. LEXIS 20. In *O'Farrell*, the arbitrator denied penalties because the record failed to show a motion for penalties had been filed. On review, the Commission noted the claimant sought penalties on the Request for Hearing form but failed to check the box indicating whether or not a motion had been filed. Despite the omission, the Commission found that the issue of penalties was properly placed before the arbitrator because the claimant was able to attach to its brief three file-stamped penalty petitions that had previously been filed. *Id.*

Parenthetically, it should be noted that Petitioner's second motion for penalties, filed under case No. 24 WC 001200, was admitted as an exhibit but had not been filed as a motion in the CompFile system. The "filings" stored in the CompFile system does not include this motion; the second filed notice of motion and motion are stored only as uploaded documents in the "documents" directory. Based on the foregoing, I would strike the first two paragraphs on page 8 of the Arbitrator's decision under "Issue (M): Should penalties or fees be imposed upon Respondent?" and substitute language taking judicial notice of the Commission's records and finding Petitioner's motion for penalties was properly placed in issue as it was filed on September 16, 2024, and tendered as a re-filed motion to Respondent on January 16, 2025.

Turning to the merits of Petitioner's request for penalties, Respondent stopped paying TTD benefits commencing October 1, 2024, and I would find Respondent's failure to pay TTD benefits became unreasonable starting November 11, 2024. As such, I would modify the Arbitrator's decision and award section 19(l) penalties in the amount of \$2,010.00, representing \$30 per day for 67 days during the period of November 11, 2024 through the date of hearing on January 16, 2025. In so finding, I would and rely on the following evidence.

After an MRI of the left shoulder showed a superior labral tear, Petitioner presented to Dr. Corey Solman on November 15, 2023, seeking a second opinion regarding his left shoulder injury as well as the injuries he sustained in the first accident which were continuing to bother him. Dr. Solman diagnosed a Type II SLAP lesion with posterior inferior extension of the left shoulder, which he related to the accident of May 4, 2023, and recommended surgery. Dr. Solman also recommended a radial tunnel release and cubital tunnel release for the right elbow injury. He later recommended a PRP injection to the patella tendon and retropatellar tendon fat pad area in the right knee.

On April 22, 2024, Dr. Lyndon Gross performed a Section 12 evaluation for Respondent. (RX3) Petitioner provided consistent histories regarding both accidents and his injuries involving the right knee, right elbow and left shoulder. Dr. Gross diagnosed Petitioner with right elbow lateral epicondylitis, right knee contusion, and a left shoulder superior labral tear. Dr. Gross opined that the first accident of April 5, 2023 exacerbated but did not aggravate the lateral epicondylitis.

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Dr. Gross further opined that the first accident of April 5, 2023 caused a right knee contusion without permanent aggravation. Dr. Gross also opined that the second accident of May 4, 2023 may have caused or permanently aggravated the superior labral tear in the left shoulder. Dr. Gross agreed with Dr. Solman that the left shoulder condition required surgery. Dr. Gross did not find work restrictions were needed for the right elbow or right knee; however, he recommended work restrictions for the left shoulder including a lifting limit of 20 pounds and avoidance of overhead activities. Dr. Gross commented that his recommended restrictions were temporary until further evaluation of the shoulder. (RX3) Following the IME, Dr. Solman received approval to perform surgery on Petitioner's left shoulder.

Upon review of Dr. Gross's IME report, it should be noted that Dr. Gross was not asked about the anticipated post-operative recovery period and Dr. Gross offered no opinions regarding same. Dr. Gross offered no opinion regarding Petitioner's anticipated work status following shoulder surgery and he did not offer any estimated timeframe he would anticipate Petitioner should be able to return to work after surgery and reach MMI. (RX3)

On August 8, 2024, Petitioner underwent the left shoulder surgery with authorization from Respondent. On August 21, 2024, Dr. Solman issued a work status note with an off-work restriction. (PX1, dep exhibit 2) Dr. Solman re-evaluated Petitioner on September 18, 2024, at which time it was noted Petitioner was overall doing well and "able to demonstrate near full range of motion." (PX1, dep exhibit 2) In his written treatment plan, Dr. Solman indicated "[w]e will plan on keeping him off work at this point and reevaluate in four weeks, or sooner with any issues. (T. 150) At the bottom of the progress note, the following notation was added: "This report was dictated and approved by Ashley C. Furgason, PA-C without proofreading/editing to expedite distribution." (T. 150) There is no indication that this progress note was provided to Respondent at that time. That same day, the physician assistant wrote a work status report (RX15). The work status form contained a list of pre-printed options for restrictions. The physician assistant checked the option for "no lifting greater than" and drew a circle around "0-2" pounds. The physician assistant also checked the option for "No pushing/pulling greater than" and circled "0-2" pounds. Finally, the physician assistant checked the options for "No overhead lifting" and "No use of" with the letters "LUE" entered into the adjacent line. The physician assistant also checked the option for "off work until" and wrote "next visit." (RX15) Respondent received this work status note and interpreted the note as authorizing restricted work with a 2-pound limit and no use of the left arm.

Also on September 18, 2024, Dr. Solman signed a separate work status note. (T. 151) This work status note also suffered from similar inconsistencies. The doctor's note indicated Petitioner was released with restrictions precluding overhead lifting and use of the left arm, while simultaneously placing Petitioner "off work" until the next appointment. (T. 151) There is no indication in the record that this note was provided to Respondent.

On September 20, 2024, Respondent sent Petitioner's attorney via fax a letter offering temporary transitional work through a local a non-profit thrift store. (RX9) The letter included

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working hours and indicated the assigned duties were within the restrictions of no lifting more than 2 lbs., no overhead lifting, and no repetitive use of the left arm.

On September 26, 2024, Petitioner filed a notice of motion and motion requesting penalties under sections 19(l), 19(k) and section 16. The motion alleged that TTD benefits had stopped as of September 18, 2024. That same day, Respondent filed a 19(b) response indicating “There are conflicting off work notes with no explanation from the doctor.”

Petitioner later agreed while testifying that he was given “a slip talking about a possible return to work.” (T. 31-32) Petitioner also agreed the September 18, 2024 work status note created some confusion. (T. 31-32) Petitioner testified he provided the work status note to his employer, and acknowledged receipt of an email on September 27, 2024, containing the letter offering temporary transitional work. Petitioner further testified it was his belief he was to be off work, and the letter prompted him to ask Dr. Solman for clarification. (T. 34) Petitioner testified that Dr. Solman confirmed to him he was to be off work. (T. 34-35)

On September 27, 2024, Dr. Solman issued a handwritten note intending to clarify the confusion created by the September 18, 2024 work status note. The clarifying note stated:

On the last ws report on 9/18/24 the 0-2 lb lifting restriction *was for home use only* and confusing as he is not ready to return to work as noted in the ws note. (Emphasis added.) (PX1, deposition exhibit 2)

I find this clarification troubling for use as a basis for imposing penalties in three respects. First, Dr. Solman generated the clarifying work status note at the request of Petitioner and was created in response to the offer of temporary transitional work. Second, the clarifying work status note asserted that Petitioner was to be off work and the accompanying restrictions were intended solely for “home use.” There was no rational basis provided to explain why lifting up to 2 pounds was medically appropriate at home but not medically appropriate for work. And there was no rational basis provided to explain why the restrictions prohibiting overhead activity and use of the left arm should be confined to the home and not allowed for a sedentary work position. Finally, Dr. Solman’s decision to draw a distinction between home-based restrictions and the off work restriction only served to add further controversy. It would have been more credible and satisfactory if Dr. Solman had simply retracted the September 18, 2024 work status note in its entirety and issued a replacement off work note.

On September 27, 2024, Respondent issued a second letter via fax to Petitioner’s attorney with an offer of temporary transitional work. (RX9) It is unknown whether Respondent had seen Dr. Solman’s clarifying work status note issued that same day. As such, it is unknown whether the second job offer letter was issued because a week had passed with no response since the prior modified job offer or if the second letter was issued in response to the September 27, 2024, work status note. In any event, according to the parties’ completed Request for Hearing form, Respondent terminated TTD starting October 1, 2024. (AX2)

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Dr. Solman appeared for a deposition on November 11, 2024. (PX1) Medical records documenting his treatment from November 15, 2023 through October 16, 2024, were marked as deposition exhibit 2. The October 16, 2024 visit was at that time Petitioner's most recent treatment visit preceding the deposition. In the "Discussion" part of the progress note, Dr. Solman noted ongoing right elbow issues (related to the first accident claim) and recommended a right cubital tunnel release with ulnar nerve transposition and a lateral epicondyle debridement with radial tunnel release. Dr. Solman then indicated the following in the progress note:

This issue continues to bother him **despite being off of work for the left shoulder** condition. If he is approved, he would certainly be able to recover adequately from the right elbow surgery during the time that he is still treating and recovering from his left shoulder surgery. If he has any questions or problems, he will let us know. We will work on approval for treatment of the right elbow, and **we will keep him off of work until his next visit.** (Emphasis added.)

In light of the off work status documented in the October 16, 2024 progress note, which was part of the deposition exhibit, I would find Respondent became aware, as of the date of the deposition, that Petitioner was under a "no work" restriction. Any confusion created by the September 18, 2024 work status note and the clarifying note of September 27, 2024, was thus rendered moot as of the date of the deposition.

On November 13, 2024, Dr. Solman saw Petitioner for follow-up and issued another work status note continuing Petitioner's off-work status. (PX2)

On November 18, 2024, Petitioner filed a notice of motion and motion requesting a section 19(b) hearing for the status call on December 12, 2024. The notice of motion did not check boxes for fees and penalties. On November 19, 2024, Respondent filed its section 19(b) response, in which Respondent asserted that "Petitioner is not entitled to TTD because he was offered transitional light duty within his restrictions." As mentioned, Dr. Solman had been deposed and the medical records exhibit included the October 16, 2024 progress note taking Petitioner off work.

Respondent did not arrange for a second IME with Dr. Gross and did not request an updated records review. Dr. Gross appeared for his deposition on December 19, 2024 and testified regarding his findings and opinions based on his section 12 examination of April 22, 2024. (RX4) Dr. Gross reaffirmed his prior opinion that surgery for the left shoulder was appropriate. He also reaffirmed his prior opinion that work restrictions were needed prior to shoulder surgery. (RX4 at 29) Dr. Gross testified that he had not seen Petitioner or reviewed medical records since April 22, 2024, and he could not provide an opinion regarding Petitioner's current shoulder condition. (RX4 at 29) Dr. Gross was therefore unable to say if updated work restrictions were needed. (RX 4 at 29-30)

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The CompFile system's records show the motion for hearing was presented at the status call and the case was set for pre-trial on December 17, 2024. The case was then set for trial on January 16, 2025. Dr. Solman saw Petitioner on December 24, 2024, and issued another off-work note. (PX2) On January 15, 2025, Petitioner served a second motion for penalties on defense counsel with notice of Petitioner's intention to present the motion on January 16, 2025, the date the case had been set for trial.

As provided under section 19(l), penalties of \$30 per day may be allowed, up to a maximum of \$10,000.00, for each day benefits are withheld when "the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b)." (820 ILCS 305/19(l).) 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 vs. Industrial Comm'n*, 183 Ill. 2d 499, 514-515, 702 N.E.2d 545 (1998). The employer bears the burden of justifying the delay and its justification is sufficient only if a reasonable person in the employer's position would have believed the delay was justified. *Id.* A delay of 14 days or more creates a rebuttable presumption of unreasonable delay." (820 ILCS 305/19(l).)

Based on the foregoing, I would find Respondent's failure to pay TTD benefits became unreasonable starting November 11, 2024. On that date, Dr. Solman appeared for his deposition, at which time Petitioner's deposition exhibit of the doctor's medical records included what was then the most recent treatment visit of October 16, 2024, showing he had taken Petitioner off work. Petitioner's off work status as documented in the October 16, 2024 progress note in my view rendered moot the confusing work status documentation created on September 18, 2024 and September 27, 2024. In adopting the Arbitrator's decision, the majority finds the "clarifying" work status note issued on September 27, 2024, had adequately cleared up the confusion initially created by the September 18, 2024 work status note. I disagree, as I find the purported clarification troubling for the reasons discussed above. The next progress note from October 16, 2024 unequivocally took Petitioner off work, and when that progress note was presented with the medical records during Dr. Solman's deposition on November 11, 2024, Respondent became obligated to initiate payment of TTD benefits as it was aware Petitioner was by that time between 13 and 14 weeks out from his shoulder surgery and had no contrary medical opinion with which to question Petitioner's off-work status.

I would also strike the second to last paragraph on page 9 of the Arbitrator's decision. In declaring penalties under section 19(l) were appropriate, the Arbitrator misapplied the legal standard governing penalties under section 19(k) and cited the Appellate Court's decision in *McDonald's vs. Illinois Workers' Comp. Comm'n*, 2022 IL App (1st) 210928WC, at PP 59-75, which addressed penalties under section 19(k) and fees under section 16. I would replace the stricken paragraph with language stating that the Commission finds that Respondent's refusal or failure to pay TTD benefits was unreasonable "without good and just cause" under section 19(l) of the Act. As the Supreme Court in *McMahan vs. Industrial Comm'n* stated, "[i]f the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for

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the delay, an award of the statutorily specified additional compensation is mandatory." *McMahan*, 183 Ill. 2d 499, at 514-515. 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. *Id.* Here, Respondent did not meet its burden to justify its refusal or failure to pay TTD during the period described herein.

For the above reasons, I concur in part with the majority's opinion affirming the award of TTD benefits and penalties under section 19(1); however, I dissent with respect to the Arbitrator's finding that a motion for penalties at the time of trial or one day prior is proper, and I would strike the Arbitrator's analysis regarding the notice and timeliness of the second motion for penalties. I would also modify the Arbitrator's Decision to commence the start date of the section 19(1) penalties on November 11, 2024, and award \$30 per day for 67 days, from November 11, 2024 through January 16, 2025, for a total amount of \$2,010.00, and correct the legal standard for 19(1) penalties.

/s/ Kathryn A. Doerries

Kathryn A. Doerries

November 7, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC001200
Case Name	Steven Valentin v. WKS Restaurant Group
Consolidated Cases	23WC026772;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Rich Lenkov

DATE FILED: 2/25/2025

/s/ Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 25, 2025 4.18%

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)

Steven Valentin
 Employee/Petitioner

Case # **24** WC **001200**

v.

WKS Restaurant Group
 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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield**, on January 16, 2025. 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, **5/4/2023**, 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 \$59,879.80; the average weekly wage was **\$1,222.04**.

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

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

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$28,019.07** for medical benefits, for a total credit of **\$0**.

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

Petitioner is entitled to penalties and attorneys' fees under §820 ILCS 305/19(l) due to Respondent's failure to pay TTD benefits.

ORDER

Respondent shall pay for all reasonable and necessary medical services associated with treatment to the Petitioner's left shoulder, as outlined in Petitioner's exhibit 10. 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 TTD benefits from October 1, 2024 through January 16, 2025, representing **15 3/7** weeks at the TTD rate of **\$814.69/week**, pursuant to Section 8(b) of the Act.

Respondent shall pay penalties to Petitioner, pursuant to §820 ILCS 305/19(l), totaling **\$3,240.00**.

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

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 25, 2025

FINDINGS OF FACT

Petitioner sustained two undisputed work accidents, and the matters were tried together on January 16, 2025 in Springfield. This matter relates to Petitioner's second injury on May 4, 2023.

Steven Valentin, Petitioner, is a 53-year-old facilities technician who began working for Respondent on April 19, 2022. His work activities include the maintenance, repair, and installation of equipment. As part of his job, he worked at several Denny's restaurants. His job is physical and requires bending, stooping, and kneeling.

The first work accident, on April 5, 2023, occurred when Petitioner was in the main kitchen area at Denny's in Litchfield, Illinois. Petitioner was working on replacing the gas line of a grill. The chef was assisting him due to the weight of the grill. When the chef ignited the pilot, a large flame shot at Petitioner while he was stooping down to observe what the chef was doing. The burst of the flame caused the Petitioner to jump back and stumble. He subsequently fell and struck his right elbow and right knee on the tile floor. Petitioner noted pain in his right elbow and right knee following the accident.

Petitioner's right arm began to swell and he experienced pain and throbbing in this arm. These sensations extended to his entire forearm and down into his hand. Petitioner felt pain down to his ring and pinky finger. Petitioner testified that he never had problems with the right arm or right hand prior to April 5, 2023. As to his right knee, Petitioner testified that certain activities such as climbing ladders and kneeling caused pain.

Petitioner informed his supervisor, Robert Brady, of the work accident. Respondent sent him to Concentra Urgent Care, where he first received medical care on April 17, 2023. Petitioner testified that the 12-day delay in between the accident and the first date of treatment was due to his wanting to first try home remedies to see if his complaints improved.

At the initial visit on April 17, 2023, Petitioner provided a history of the accident that is consistent with his testimony. Petitioner followed up two more times with Concentra, on April 20th and on April 27th, where he improved but continued to complain of pain.

The second accident occurred on May 4, 2023, while Petitioner was pulling a rope attached to equipment onto the roof, when his right arm gave out on him. As a result, he had to use his left arm to keep the equipment attached to the rope from falling. Shortly after pulling the equipment onto the roof, he began to feel pain in his left shoulder. Petitioner testified he never had problems with the left shoulder prior to the accident.

Petitioner continued to follow up with Concentra for his right elbow and right knee injuries. Petitioner testified that he mentioned the left shoulder to Concentra, but they only treated his right knee and shoulder.

An MRI of Petitioner's right elbow was reviewed by Dr. Jason Rabenold at Concentra on May 26, 2023. Dr. Rabenold noted that the MRI demonstrated a high-grade partial tear of the common

extensor tendon. Dr. Rabenold diagnosed the partial tear of the common extensor tendon as well as lateral epicondylitis. He also diagnosed a right knee sprain and contusion with patellar tendinitis. Dr. Rabenold related this diagnosis to the work accident of April 5, 2023. Petitioner subsequently underwent physical therapy at Concentra from May 26, 2023 to July 19, 2023.

On August 4, 2023, Concentra released Petitioner full duty and found he had reached maximum medical improvement. Petitioner testified that he tried to return to work after being released by Concentra, but still experiencing pain in his right elbow and right knee.

In September 2023, Petitioner asked to return to Concentra to receive treatment for his left shoulder. On September 21, 2023, Petitioner was seen by Dr. Gustavo Galeano, who recommended an MRI. The left shoulder scan was completed on October 4, 2023, and indicated a superior labral tear with extension posteriorly.

Petitioner was referred to physical therapy for his left shoulder. Petitioner was provided with light duty restrictions which Respondent could not accommodate. He testified that he struggled to perform his work activities during this time due to problems with his left shoulder, right knee and right elbow.

Petitioner sought a second opinion with an orthopedic surgeon, Dr. Corey Solman, on November 15, 2023. Dr. Solman recorded both work accidents and noted the ongoing problems in Petitioner's left shoulder, right knee and right elbow. Following evaluation, Dr. Solman diagnosed Petitioner with having a right elbow contusion with possible post-traumatic radial tunnel syndrome and lateral epicondylitis, and a post-traumatic painful Osgood-Schlatter and a hinging fragment or loose fragment of the patellar tendon of the right knee. Dr. Solman related these conditions to the work accident of April 5, 2023. Further, Dr. Solman diagnosed a Type II SLAP lesion with posterior inferior extension of the left shoulder which he related to the accident on May 4, 2023. Dr. Solman ordered an MRI of Petitioner's right knee, as well as a nerve conduction study of his right arm.

On February 20, 2024, Petitioner completed a nerve conduction study of the right arm. Dr. Daniel Phillips diagnosed relatively moderate demyelination relative sensorimotor median neuropathy across the right carpal tunnel and mild compressive neuropathy of that posterior interosseous nerve across the radial tunnel.

On March 15, 2024, Petitioner completed an MRI of his right knee. The MRI showed increased signal around the posterior horn of the medial meniscus at the tibial root and meniscus scapular junction.

Following the MRI and nerve conduction study, Dr. Solman recommended right elbow surgery for a radial tunnel release and cubital tunnel release. He later recommended a PRP injection to patella tendon and retropatellar tendon fat pad area in the right knee. Dr. Solman recommended surgery to the left shoulder.

On April 22, 2024, Petitioner was sent by Respondent to Dr. Lyndon Gross for a Section 12 evaluation. Petitioner provided Dr. Gross a consistent history of the right knee, right elbow and

left shoulder injuries. Following the examination, Dr. Gross diagnosed Petitioner with the following: right elbow lateral epicondylitis, right knee contusion, and a left shoulder superior labral tear. Dr. Gross agreed with Dr. Solman on the need for surgery to the left shoulder relating to the work accident of May 4, 2023. Dr. Gross noted in his report that the work accident of April 5, 2023, served to exacerbate and make symptomatic the problems in Petitioner's right knee and right elbow. However, he did not believe that it permanently aggravated his condition in the right knee and arm, and offered no treatment recommendation.

Following Dr. Gross' exam and report, Dr. Solman received approval to perform surgery on Petitioner's left shoulder. On August 8, 2024, Petitioner underwent a left shoulder arthroscopic surgery. Petitioner followed-up with Dr. Solman post-operatively, and was kept off work.

There was a dispute at hearing regarding a work status slip from September 18, 2024. Within the slip prepared by the physician's assistant, the box is checked indicating that Petitioner is to remain off work until the next visit. However, the slip also checks the boxes indicating "No overhead lifting" and "No use of the LUE." (RX15) Dr. Solman prepared and signed a similar work slip on that same date. (PX1, p. 75). The two notes of September 18, 2024 are filled out in a different manner than off-work notes written prior to September 18, 2024, none of which indicate restrictions and off-work on the same note. (PX1, pp. 79, 86)

To clarify this change, on September 27, 2024, Dr. Solman provided a supplemental note indicating that that restrictions indicated on the work status note were for home use, and that he intended for Petitioner to remain off work at that time of the September 18, 2024 visit. (PX1, p. 73) Dr. Solman provided testimony in support of this note and the need for Petitioner to remain off work. (PX1, pp. 30-32)

Despite this, Respondent attempted to set up temporary transitional employment for Petitioner. Petitioner testified that Respondent had tried to coordinate similar temporary transitional employment positions for him a few times in the past. Each time, he was unable to physically meet the temporary employer's job demands. This time, when Petitioner informed the supervisor at the temporary employer of his restrictions, she told him that they would be unable to accommodate. Petitioner testified that at the time of this last temporary transitional employment offer, he was one and one-half months following his shoulder surgery. Petitioner's arm was in a sling and he was taking Oxycontin. Petitioner testified that did not feel that he could safely drive the 20 minutes to the job or perform work activities at that time.

Petitioner testified that the symptoms in his right elbow and right knee continued up to the date of trial and have never gone fully away. Petitioner is right-handed and still has pain in his right elbow going down into his right hand with numbness into his right ring finger and pinky. His symptoms affect the strength in his arm and he can only lift 15 to 20 pounds with his right arm. If he tries to lift more, he feels a tear or pulling in the right muscle in his forearm as well as numbness and tingling going down his arm.

As it relates to his right knee, Petitioner testified that he continues to have pain that is a numb stinging sensation pain just below the kneecap. He testified to having problems putting force on his knee; kneeling; and walking on an incline.

Petitioner testified that at the time of trial, he remains in post-operative care with Dr. Solman who continues to keep him off work due to his left shoulder injury. Petitioner testified that he is still having problems with lifting items overhead as it causes pain in his shoulder joint. He noted that he is up to lifting about 5 pounds overhead in physical therapy.

Dr. Corey Solman Testimony

On November 11, 2024, the parties deposed Petitioner's treating surgeon, Dr. Corey Solman.

On August 8, 2024, Dr. Solman performed surgery of Petitioner's left shoulder, and took him off work. Dr. Solman testified that he continued to keep Petitioner off work. (PX 1, p. 21)

Dr. Solman testified regarding the work status slip which was the basis for the hearing in this matter. Dr. Solman testified the September 18, 2024, work status slip gave Petitioner restrictions despite placing him off work, because the written restrictions were simply to provide Petitioner with his restrictions at home. Dr. Solman noted that the work status slip indicated "off work" confirming that he intended to keep Petitioner off work, and not release him to any light duty. His testimony is consistent with the work slips as well as his supplement note of September 27, 2024. (PX 1, pp. 30-32, 73)

In regard to Petitioner's right elbow, Dr. Solman testified that Petitioner needed to undergo a right elbow lateral epicondyle debridement and a radial tunnel release. Dr. Solman also recommend that he undergo a cubital tunnel release at the same time. Dr. Solman related this condition and need for treatment to the work accident of April 4, 2023. (PX 1, pp. 36-37)

Regarding the right knee, Dr. Solman recommended a PRP injection. Dr. Solman pointed to the pain Petitioner still experienced in the knee when doing basic activities, such as kneeling around the house, to support the need for PRP injections. Dr. Solman testified that if Petitioner were to gain great relief from the injections, but the pain came returned at some point, then he may require debridement or removal of the ossicles from the patella tendon. (PX 1, p. 37)

Dr. Solman related the right knee and right elbow conditions and need for treatment to the work accident of April 5, 2023. Dr. Solman testified that surgical intervention to the left shoulder was due to the work accident of May 4, 2023. (PX 1, pp. 37-38)

Dr. Lyndon Gross Testimony

On December 19, 2024, the parties deposed Respondent's Section 12 examiner, Dr. Lyndon Gross. Dr. Gross diagnosed Petitioner with having right elbow lateral epicondylitis; a right knee contusion; and a left shoulder labral tear. (RX 4, pp. 20-24)

Dr. Gross believed that the work accident of April 5, 2023, served to "exacerbate" the condition in the right elbow and right knee. Dr. Gross testified that "exacerbation" meant that "something that makes an underlying problem symptomatic, but does not change the underlying problem, does not anatomically change that condition." (RX 4, pp. 20-22)

On cross-examination, Dr. Gross clarified that his use of the word “exacerbate” meant “that something was made symptomatic” but not “permanently aggravated.” (RX 4, pp. 27-28)

In regard to the right elbow, Dr. Gross agreed that the Petitioner has a partial tear of the common extensor tendon at the origin of the lateral epicondyle as well as lateral epicondylitis. Dr. Gross testified that in Petitioner’s case, he had no symptoms in his right arm until the work accident of April 5, 2023, and since the work accident, Petitioner developed symptoms which coupled with the physical examination findings necessitated medical care. (RX 4, pp. 20-23)

In regard to Petitioner’s right knee, Dr. Gross testified that he believed Petitioner contused the front of his knee in the work accident, and was diagnosed with having a possible nondisplaced fracture of the right tibial tuberosity. Dr. Gross noted that it would be reasonable for a doctor to recommend further treatment for the knee, given his ongoing complaints. (RX 4, pp. 30-35)

Regarding Petitioner’s left shoulder, Dr. Gross believed that the accident of May 4, 2023, served to permanently aggravate the condition in the shoulder, necessitating medical care. Dr. Gross agreed with Dr. Solman that surgery was appropriate and that Petitioner needed work restrictions until the surgery could be completed. Dr. Gross testified that he had not seen Petitioner or reviewed medical records since April 22, 2024. Therefore, he was not aware of Petitioner’s current medical status, and could not provide any updated work restrictions. (RX 4, pp. 27-30)

CONCLUSIONS OF LAW

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

Incorporating the above, the Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period of October 1, 2024, up until the date of trial on January 16, 2025, totaling 15 3/7 weeks at his TTD rate of \$814.69/week.

On August 8, 2024, Petitioner underwent surgery to his left shoulder by Dr. Solman. Dr. Solman provided ongoing work slips and testified that he kept Petitioner off work pending his recovery from the surgery.

Respondent argues that the work status slip from September 18, 2024, is confusing and warrants the cessation of off-work benefits as Petitioner did not partake in the temporary transitional employment they offered. Given that Dr. Solman’s office changed how they completed the work status notes on September 18, 2024, this initial confusion is reasonable.

However, within the slip completed by Dr. Solman and the alternate slip completed by Dr. Solman’s PA, both indicate that Petitioner was to be off work until his next visit in four weeks. Moreover, Dr. Solman promptly provided a supplemental note, on September 27, 2024, as well as later testimony, that Petitioner was to remain off work. (PX 1, pp. 30-32, 73, 75; RX15).

Respondent had an opportunity to cross-examine Dr. Solman in his deposition to clarify any confusion, and Dr. Solman remained consistent in his testimony. Finally, Dr. Gross testified that

he had not seen Petitioner since April 22, 2024, and was therefore unable to provide any opinion regarding Petitioner's work status. (RX 4, pp. 29-30).

Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits for the period of October 1, 2024, through January 16, 2025, totaling 15 3/7 weeks, at his TTD rate of \$814.69.

Issue (M): Should penalties or fees be imposed upon Respondent?

Incorporating the above, Petitioner filed a Motion for Penalties the day before trial. Respondent objected to the penalties motion, indicating that it was not filed timely. It should be noted that Section 16, Section 19(k) and Section 19(l) have no prerequisite that Petitioner file a Motion for Penalties prior to the trial. Section 9020.70 recognizes that motions can be made either before or during an Arbitration hearing.

Section 9020.70 specifically indicates, "All motions, **except motions made during an Arbitration or Review Hearing**, motions for a continuance of cases in regular review call and petitions filed under section 19(h) and/or Section 8(a) of the Act must be accompanied by a Commission form entitled Notice of Motion and Order and must be served on the Arbitrator or Commissioner and all of the parties in accordance with subsection (b)." (Emphasis added). The rule specifically indicates that motions can be made during an Arbitration hearing.

Under Section 19(k), "In cases where there have been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this act equal to 50% of the amount payable at the time of such award."

Under Section 19(l), "In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, ruse, or unreasonably delay the payment of benefits under Section 8(a) of Section 8(b), the Arbitrator or Commission shall allow to the employee additional compensation in the sum of \$30 per day for each day for each day that the benefits under Section 8(a) or Section have been so withheld or refused, not to exceed \$10,000."

Further, under Rule 9110.70, it notes, "When an employee begins payment of temporary total compensation and later terminates or suspends further payment before an employee in fact has returned to work, the employer shall provide the employee with a written explanation of the basis for the termination or suspension of further payment no later than the date of the last payment of temporary total compensation."

In the present case, Petitioner presented medical records and expert testimony confirming that Dr. Solman kept him off work exclusively for the post-operative care of Petitioner's left shoulder. Respondent's Section 12 examiner, Dr. Gross, did not contest the work status and admitted that he had no opinion regarding Petitioner's work status following the surgery to the left shoulder.

Respondent contested its responsibility for payment of lost time benefits based upon a work-status slip that specifically indicated on two different slips that Dr. Solman's PA, as well as Dr. Solman, marked Petitioner as being off-work. (RX15; PX 1, p. 75) While the work status note mentions further restrictions such as no overhead work and no use of the upper extremity, it specifically indicates that Petitioner is to remain off work until the next appointment. Further, Dr. Solman provided a supplemental note on September 27, 2024, clarifying Petitioner's work status. (PX 1, p. 75) Dr. Solman also confirmed in his deposition that Petitioner was to remain off work (PX 1, pp. 30-32)

While there was an initial, reasonable, basis to question the work status note of September 18, 2024, the Petitioner promptly cured this with Dr. Solman's note of September 27, 2024 note and subsequent testimony. Respondent offered no reasonable basis for the denial of lost time benefits beginning October 1, 2024. Respondent's denial of TTD benefits is unreasonable and vexatious.

Therefore, the Arbitrator concludes that given that the Respondent has presented no real controversy in this matter, and acted in a frivolous, vexatious and unreasonable manner in terminating Petitioner's TTD, penalties are appropriate. (*McDonald's v. IWCC*, 2022 IL App (1st) 2121098WC, at ¶ 59-75).

Therefore, the Arbitrator finds that Petitioner is entitled to penalties under Section 19(l) totaling \$3,240.00, or 108 days of past lost time benefits at \$30 per day.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013195
Case Name	Jeffrey Christen v. ICG Illinois, LLC.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0445
Number of Pages of Decision	27
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Julie Webb

DATE FILED: 11/10/2025

/s/ Carolyn Doherty, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JEFFREY CHRISTEN,
 Petitioner,

vs.

NO: 23 WC 13195

ICG ILLINOIS, 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 occupational disease, causal connection, permanent disability and "other: legal error, evidentiary error, Section 1(d) – Section 19(f), 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 dated March 3, 2025, 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.

23 WC 13195

Page 2

November 10 2025

O: 11/05/25

CMD/jjm

045

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

/s/ *Frank J. Soto*

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC013195
Case Name	Jeffrey Christen v. ICG Illinois, LLC.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Casey VanWinkle
Respondent Attorney	Kenneth Werts

DATE FILED: 3/3/2025

/s/Edward Lee, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 25, 2025 4.18%

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**

JEFFERY CHRISTEN

Employee/Petitioner

Case # **23** WC **013195**

v.

Consolidated cases: _____

ICG ILLINOIS, 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 **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **December 20, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **6/4/21**, 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 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 **\$56,957.68**; the average weekly wage was **\$1,095.34**.

On the date of accident, Petitioner was **57** years of age, *married* with **0** dependent children.

Petitioner claims no medical.

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

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

ORDER

No benefits are awarded.

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

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

Edward Lee
Signature of Arbitrator

March 3, 2025

FINDINGS OF FACT

Petitioner worked at Viper Mine for about 16 years beginning in about 2005. His employment with Viper ended approximately four years prior to arbitration due to downsizing. He testified that he went into work and changed clothes to go underground and when he went into his shift meeting, he was told 43 miners were getting fired, effective immediately. He testified that he worked in production with the coal buggies which required him to haul coal from the miner to the feeder. He performed this work for about a year. He then ran the supply tractor hauling supplies and rock dust that they spread around the bottom of the floor. Petitioner testified that in his next position, he ran the grader for six years, and then went back to the supply tractor for another couple of years. Since being laid off from mining, Petitioner took a full-time job as a technician at Havana Tractor, a farm implement dealer, where he performed mechanic work, set up equipment, and delivered equipment. He testified he travels about 10 minutes to get to his job. He continued to work in that position as of arbitration.

Petitioner testified that about 12 years ago he began having trouble breathing, so he saw his doctor who sent him to a pulmonologist and cardiologist. He testified those doctors gave him medicine and a bipap machine for use at night. He testified that when he had to do heavy lifting or carry things far at work for the coal mines, that would affect his breathing.

Petitioner testified that he continued to experience breathing problems at the time of arbitration. He testified that he likes hunting and he gets winded with all his gear on. He testified he has friends that own a duck club and he hunts with them out of their blind. He testified he wears all his gear and waders in the water and has to walk half a mile to three quarters of a mile to get where the blind is. He testified that it was duck season at the time of arbitration and the next season was goose season. He testified he hunts geese as well. He testified he tried to hunt every couple of weeks depending on how busy he is at work. He testified hunting can occur any day of the week, but he goes only on weekends.

Petitioner testified that he gets winded splitting wood when he is lifting the logs. Petitioner testified that he has a wood burner in his home. He testified that he does not know how much wood he has to chop for his wood burner. He testified it is not used as his main source of heat, and he uses it in the evenings if the temperature is really cold.

Petitioner testified that he rides motorcycles for a hobby. He travels locally and long distance. He testified most of his motorcycle buddies have passed away. He testified they used to take pretty good trips, including to Sturgis. He testified that more recently the trips have been more local. Petitioner testified that he enjoys outdoor stuff, such as fishing. He testified that he lives on a lake, Matanza Beach, and has several boats. He testified that the lake is a mile and-a-half long and maybe 600 feet to 600 yards wide. He testified that his property is only 60 by 90 and that it used to be a fishing cabin.

Petitioner testified that he goes to dirt track races and sprint track races, but he does not travel for vacations. He testified his last vacation was in 2001 when he went to Sturgis.

Petitioner testified that as of the time of arbitration, he was still being treated for his breathing condition. He testified he took medicine and used the bipap machine for treatment. He testified that the medicine was probably going to be required for his entire life. Petitioner testified

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that the medicine he was on was for heart maintenance and breathing maintenance. He testified that he started the medication about 12 years prior. He testified he has been diagnosed with slight emphysema and COPD.

Petitioner testified that he received his primary care at the Springfield Clinic until the coal mine changed the insurance and he now sees Dr. Stanley Noll for primary care. He testified he still sees pulmonologist, Dr. Abraham at the Springfield Clinic. He testified he sees cardiologist, Dr. Rocha-Singh, at Prairie Heart, however Dr. Rocha-Singh is retiring and Petitioner will be seeing a new cardiologist at the start of next year. Petitioner testified he suffers from congestive heart failure and experienced a heart attack four years prior. Petitioner testified that he has a smoking history of 36 years. He testified that because of his smoking, he has undergone low dose CTs of his chest once a year.

Petitioner testified that he was always honest with his medical providers about any symptoms or problems he was having or not having. Petitioner testified that he saw Dr. Istanbuly one time at his attorney's request. He testified this occurred in June of 2023 and he underwent a breathing test.

Petitioner testified that from time to time while he was employed at the mine, he had an opportunity to undergo NIOSH chest x-ray screening for black lung. Petitioner testified that he participated in the screenings. He testified that after the screening he would receive a letter revealing the results of the chest x-ray. He testified that he did not bring any of the letters with him to arbitration.

Dr. Suhail Istanbuly is board certified in internal medicine, pulmonary medicine, critical care medicine and sleep medicine. (Petitioner's Exhibit No. 1, p. 5). Dr. Istanbuly started working in southern Illinois in 2003. (Petitioner's Exhibit No. 1, pp. 5-6). Dr. Istanbuly's main location now is Hines, VA in the Chicago area. He has a satellite clinic in Southern Illinois. He testified that he sees pulmonary and sleep medicine cases in all those locations. (Petitioner's Exhibit No. 1, p. 7). Dr. Istanbuly testified that he does black lung examinations on coal miners at the request of attorneys. He also performs these examinations for DOL. He testified that when he would give an examination, he would read the x-ray himself, take the pulmonary function testing himself, and take the patient history himself. (Petitioner's Exhibit No. 1, pp. 6-7).

Dr. Istanbuly examined Petitioner on June 20, 2023. (Petitioner's Exhibit No. 1, p. 8). Dr. Istanbuly saw Petitioner one time at his attorney's request for a workup in his black lung claim. He testified that in the past for a number of years he performed five to seven such examinations per month. These examinations were always at the request of a Claimant's attorney. (Petitioner's Exhibit No. 1, pp. 44). Dr. Istanbuly still goes to Southern Illinois once a month, and on occasion when he's down there, and he still performs black lung exams. (Petitioner's Exhibit No. 1, pp. 44-45).

Dr. Istanbuly testified that Petitioner has 16 years of mining employment all underground. Dr. Istanbuly noted in his report that Petitioner worked five days a week on an average of nine-to-ten-hour shifts. He testified that based on a 40-hour normal work week, Petitioner's exposure as a coal miner rather than being equivalent to 16 years of underground employment would be equivalent to 20 years or 18 years, (Petitioner's Exhibit No. 1, pp. 9-10). Dr. Istanbuly testified that Petitioner was terminated because of downsizing. He testified that Petitioner was being treated for COPD by a pulmonologist at the time of his exam. Dr. Istanbuly testified that Petitioner was

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taking albuterol as needed for his COPD. He testified that albuterol is used for all kinds of obstructive lung diseases whether it was reversible or fixed. He testified that the prescription drug albuterol would be consistent with a diagnosis of asthma and bronchospasm. (Petitioner's Exhibit No. 1, pp. 10-11). Dr. Istambouly noted that Petitioner coughed on a daily basis for more than ten years. Dr. Istambouly testified that he is familiar with the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*. Dr. Istambouly testified he is familiar with the spectrum of chronic cough discussed in the *AMA Guides*. He agreed that a wet chronic cough as tending toward chronic bronchitis, a dry chronic cough as tending toward asthma, and one in the middle as asthmatic bronchitis. Dr. Istambouly testified that Petitioner wheezes frequently and wheezing is typical of a person with asthma, although it is not confined to asthma. (Petitioner's Exhibit No. 1, pp. 11-12). Dr. Istambouly testified that he did not do any testing that would help him discern the presence of reactive airways disease or asthma. Dr. Istambouly testified that given the wheezes he described, coughing on a daily basis more than ten years, mostly dry, yet aggravated by dust inhalation, humidity, and strenuous activity would be consistent with a diagnosis of asthma. (Petitioner's Exhibit No. 1, p. 13).

Dr. Istambouly testified that Petitioner had mild exertional dyspnea. He testified that Petitioner's forced vital capacity is over 80 percent. He testified that Petitioner's forced expiratory volume in one second was 73 percent. He testified that a forced expiratory volume in one second that was 73 percent would make Petitioner a Class 1 impairment under the *AMA Guides*. Dr. Istambouly testified that would not necessarily make it that Petitioner has an obstructive defect too, but if it was associated with a reduced FEV1/FVC, that would be an obstructive defect. He testified if it is associated with a normal FEV1/FVC, that would be a nonspecific reduction. (Petitioner's Exhibit No. 1, pp. 13-14). Dr. Istambouly testified his conclusion of mild obstructive defect was consistent with obstructive diseases which include emphysema, COPD, asthmatic bronchitis, and asthma. He testified one could have all of those diseases and coal workers' pneumoconiosis at the same time. He testified in cases of overlap; it is hard to tell which diseases caused which percentage of the problem. (Petitioner's Exhibit No. 1, pp. 15-16).

Dr. Istambouly testified that Petitioner has coal workers' pneumoconiosis related to long-term coal dust inhalation. He testified that the environment of a coal mine can cause asthma. (Petitioner's Exhibit No. 1, p. 17). Dr. Istambouly testified that Petitioner has COPD related to long-term coal dust inhalation and smoking. He testified that Petitioner has clinically-significant pulmonary impairment in terms of signs and symptoms of pulmonary disease due to coal mining and smoking. (Petitioner's Exhibit No. 1, pp. 18-19)

Dr. Istambouly testified that Petitioner had radiographically apparent pulmonary impairment that would result in damaged tissue which could not perform the usual function of normal, healthy lung tissues. He testified that he based his conclusion on the B-Reader report of Dr. Smith. He testified that a CT is more accurate than x-rays alone and it is possible to have emphysema that shows up on a CT but not on an x-ray. (Petitioner's Exhibit No. 1, p. 20). Dr. Istambouly testified that Petitioner is expected to have significant physiologic disability based on his occupational history, chest x-ray findings, and PFT abnormality. He testified that Petitioner is permanently precluded on a medical basis from returning to work as a coal miner and it is advisable for him to avoid any further coal dust inhalation to prevent the progression of his pulmonary disease. (Petitioner's Exhibit No. 1, pp. 21, 23).

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Dr. Istambouly testified that when emphysema is causing an obstruction or tending toward an obstruction, it is due to the loss of elasticity in the alveolar walls in the lungs. He testified it leads into destruction of the pulmonary parenchyma and formation of air cysts and that is the end outcome of the irreversible narrowing of the small airways. Dr. Istambouly testified that asthma is initially expected to be reversible, but if it lasts for a long term the reversible airway narrowing could turn irreversible, especially if it is associated with other harmful factors like smoking and coal dust exposure. He testified that it would be more appropriate to call it COPD rather than asthma. He testified that asthma could progress into COPD. (Petitioner's Exhibit No. 1, pp. 21-22.)

Dr. Istambouly testified that in order to have pneumoconiosis, one must have a tissue reaction to coal mine dust deposited in the lungs. He testified that the tissue reaction is called scarring or fibrosis. He testified that the scarring of coal workers' pneumoconiosis could not perform the function of normal healthy tissue. Dr. Istambouly testified that if one has coal workers' pneumoconiosis, that that person necessarily has some impairment in the function of the lung at the site of the scarring whether it can be measured by spirometry or not. (Petitioner's Exhibit No. 1, pp. 23-24). He testified that spirometry measures the global impairment of the lung and as a result, it is possible to have injury or disease in your lung despite having normal pulmonary function test results. (Petitioner's Exhibit No. 1, pp. 24-25). Dr. Istambouly testified that if one wanted to know whether or not a specific exposure had caused impairment of a miner's lungs, he would need to have serial pulmonary function tests, pretest and post tests. He testified that pulmonary function tests will tell him the type of abnormality, whether it's obstructive or restrictive, and how severe it is, but it will not tell him the etiology. (Petitioner's Exhibit No. 1, pp. 26-27). He testified that emphysema is an obstructive defect, and the scarring of pneumoconiosis can be both obstructive and restrictive. Dr. Istambouly testified that a person can have coal workers' pneumoconiosis and have normal pulmonary function testing, normal blood gases and normal physical examination of the chest. (Petitioner's Exhibit No. 1, pp. 27-28).

Dr. Istambouly testified that coal workers' pneumoconiosis is a progressive disease which could progress and become life-threatening. (Petitioner's Exhibit No. 1, p. 28). He testified that progression is gradual and one may have coal workers' pneumoconiosis without recognizing it. (Petitioner's Exhibit No. 1, p. 30). Dr. Istambouly testified that COPD is an umbrella term for a number of obstructive diseases such as emphysema, chronic bronchitis, and asthma. He testified that coal workers' pneumoconiosis could result in a COPD-like condition. He testified that restrictive lung diseases decrease the ability of the lungs to expand and obstructive lung diseases is when the elasticity is gone and some of the small airways are destroyed and it results in what might be called holes in the lungs. (Petitioner's Exhibit No. 1, pp. 31-32).

Dr. Istambouly testified that treating records would not change his diagnosis based on his reading of the x-ray, pulmonary function tests, and his physical examination. (Petitioner's Exhibit No. 1, p. 34).

Dr. Istambouly testified that the amount of years it takes to develop coal workers' pneumoconiosis varies according to the individual. He testified that CT scans are not recognized by NIOSH for the purposes of making B-readings. He testified there are no protocols for standardizing equipment used for taking CT scans. (Petitioner's Exhibit No. 1, pp. 35-36).

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Dr. Istambouly testified that chronic bronchitis is one of the chronic obstructive pulmonary diseases. He testified that one can have chronic bronchitis and have normal pulmonary function testing, blood gas testing, and physical exam of the chest. He testified that further exposure to coal dust can make a chronic bronchitis worse. He testified that a reactive airways disease, bronchospastic disease, or asthma can be aggravated by the environment and dust of a coal mine. (Petitioner's Exhibit No. 1, pp. 37-38). Dr. Istambouly testified that Petitioner could not have further exposure to coal mine dust without endangering his health. (Petitioner's Exhibit No. 1, pp. 38-39).

Dr. Istambouly testified that when a miner leaves a coal mine after 20 years or more they will have coal dust trapped in their lungs that will remain for the rest of their life. He testified that the lung tissue next to the trapped coal mine dust will be exposed to that coal mine dust for the rest of the miner's life. (Petitioner's Exhibit No. 1, pp. 39-40). Dr. Istambouly testified that a person can have coal workers' pneumoconiosis and have a normal chest x-ray. He testified that a negative x-ray can never rule out the existence of coal workers' pneumoconiosis. (Petitioner's Exhibit No. 1, pp. 40-41).

Dr. Istambouly testified that Petitioner related a significant past history of smoking which is known to be associated with cough, sputum, dyspnea on exertion, chronic bronchitis and COPD. He testified that Petitioner told him he had a smoker's cough, which is a cough occurring mostly in the morning. (Petitioner's Exhibit No. 1, p. 45). Dr. Istambouly testified there are causes of mild exertional dyspnea other than respiratory diseases. He testified that cardiomyopathy and heart failure are other causes of mild exertional dyspnea, and that Petitioner had a history of congestive heart failure. He testified that deconditioning is also another possible cause. Dr. Istambouly testified that Petitioner was obese with a BMI of 35. (Petitioner's Exhibit No. 1, p. 46).

Dr. Istambouly testified that Petitioner told him he left the mine as a result of being laid off rather than because of health issues. (Petitioner's Exhibit No. 1, p. 61). Dr. Istambouly testified that he is not sure what Petitioner had done to stay physically fit since leaving the mine. He testified that Petitioner was working as a mechanic technician at the time of his evaluation. He testified that he was not sure about the details of Petitioner's job. He testified that his occupational history of Petitioner was not complete. Dr. Istambouly testified that Petitioner was still functional at the time of his examination, and he focused on the impact of Petitioner's coal mining career on his health rather than focusing on what the Petitioner was physically capable of doing. (Petitioner's Exhibit No. 1, pp. 47-48). Dr. Istambouly was unable to state what Petitioner's job requires as a mechanic technician. He testified that Petitioner had only been at his job as mechanic technician for two years, and there is no long-term impact for any job if it is done for two years only. Dr. Istambouly testified that his diagnosis of GOLD Stage 1 COPD was consistent with Petitioner being able to work as a mechanic. Dr. Istambouly testified that he did not argue that Petitioner was totally disabled. He testified that the *AMA Guides to the Evaluation of Permanent Impairment, 6th Edition* follows the American Thoracic Society/European Respiratory Society Interpretive Strategies for lung function tests not the GOLD standard. (Petitioner's Exhibit No. 1, pp. 48-51).

Dr. Istambouly testified that according to the American Thoracic Society Interpretive Strategies, one must have a reduced FEV1/FVC ratio for the diagnosis of obstruction to be made. Dr. Istambouly testified that he reviewed no treatment records other than those provided on the day of evaluation. He testified that what was provided to him were the results of the spirometry performed on Petitioner earlier that day and the B-reading of Dr. Smith. Dr. Istambouly testified

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that it is his preference to review a chest x-ray when evaluating an individual for black lung. He testified that reviewing a chest x-ray is helpful in his evaluation. Dr. Istanbuly testified that he did not review Petitioner's chest x-ray. He testified that Dr. Smith is a B-reader, but he was not sure whether Dr. Smith passed his last recertification exam. Dr. Istanbuly testified that he is relying upon Dr. Smith's report in part in the opinions he is expressing at the time of the deposition. Dr. Istanbuly testified that his diagnosis was not made just based on Dr. Smith's report. He testified he also took into consideration medical history, physical exam and a pulmonary function test. (Petitioner's Exhibit No. 1, pp. 52-54). Dr. Istanbuly testified that Petitioner's pulse oximetry was within normal range. He testified that in addition to albuterol, Petitioner was taking aspirin for stroke and cardiac events prophylaxis. He testified that Petitioner was on medications for cholesterol, angina, GERD, and Petitioner took Vitamin B-12. Dr. Istanbuly testified that he conducted a physical examination of Petitioner's chest and lungs which revealed no adventitious sounds, although the air entry was mildly reduced. He testified he did not hear any crackle, rales or wheeze. (Petitioner's Exhibit No. 1, pp. 56-57).

Dr. Istanbuly testified that an individual needs to be a susceptible host to develop coal workers' pneumoconiosis and not all miners do. He testified he has no knowledge of testing that would determine whether or not a miner will be a susceptible host to coal workers' pneumoconiosis. He testified that he was removed from the approved list to perform Department of Labor exams for black lung in 2019 because he was behind on paperwork. Dr. Istanbuly testified that Petitioner was totally precluded from a medial perspective from further coal mine employment on the basis of his disease not allowing him to be in the environment, not because of physical restriction. (Petitioner's Exhibit No. 1, pp. 57-59). Dr. Istanbuly testified that a person can develop coal workers' pneumoconiosis, and have it manifest itself many years after they leave the coal mines. He testified that a person can have coal workers' pneumoconiosis at autopsy that is diagnosed by pathologic examination which could not have been determined on radiographic study. (Petitioner's Exhibit No. 1, pp. 59-60).

Dr. Henry K. Smith interpreted Petitioner's chest x-ray of April 7, 2023. He interpreted same as positive for simple coal workers' pneumoconiosis p/p, upper and mid zones involved bilaterally of profusion 1/0. Dr. Smith is a board-certified radiologist and NIOSH B-reader. (Petitioner's Exhibit No. 2).

Dr. Cristopher Meyer reviewed two chest x-rays of Petitioner dated April 7, 2023, from Harrisburg Medical Center. Dr. Meyer testified that the radiographs were quality 1. Dr. Meyer testified there was a line of plate atelectasis in the left costophrenic angle, and otherwise, the lungs were clear. (Respondent's Exhibit No. 1, pp. 42-43). Dr. Meyer testified plate atelectasis occurs when the lubrication inside the air sacs of the lung essentially gets a little low, and the air sacs stick together, and it results in a line of density. (Respondent's Exhibit No. 1, p. 44). Dr. Meyer testified that oftentimes, a repeat chest x-ray will make it go away if the patient takes a couple big, deep breaths. (Respondent's Exhibit No. 1, p. 45). Dr. Meyer testified that there were no small round, small irregular or large opacities. Dr. Meyer's impression was that there were no radiographic findings of coal workers' pneumoconiosis. (Respondent's Exhibit No. 1, pp. 42-43). Dr. Meyer also reviewed a chest CT scan dated August 8, 2023, from Springfield Clinic. Dr. Meyer testified he saw no centrilobular or perilymphatic nodules and no large opacities. Dr. Meyer testified there was a small 2-centimeter focus of ground-glass density in the right lower lobe next to the spine, and there was some mild centrilobular emphysema. Dr. Meyer testified the single focus of ground

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glass opacity could have been an acute inflammatory process. Dr. Meyer testified that indolent lung cancers can also have that appearance, but it is not an appearance typical of coal workers' pneumoconiosis. Dr. Meyer testified that he saw no pleural abnormalities. Dr. Meyer testified that his impression on the CT was that there were no findings of clinical coal workers' pneumoconiosis. (Respondent's Exhibit No. 1, pp. 43-44). Dr. Meyer testified that centrilobular emphysema was mild and is typically seen in smokers. Dr. Meyer testified that emphysema means an area of lung destruction where the air sacs are overexpanded. (Respondent's Exhibit No. 1, p. 46). Dr. Meyer testified that there is no B-reading form for a CT scan. (Respondent's Exhibit No. 1, p. 47).

Dr. Meyer has been board certified in radiology since 1992. (Respondent's Exhibit No. 1, p. 8). Dr. Meyer obtained his B-reader certification in 1999. He was encouraged to take the B-reader examination by Dr. Jerome Wiot, a member of the original committee responsible for developing the instructional course now known as the B-reader program. (Respondent's Exhibit No. 1, pp. 21-23). 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 syllabus with a whole series of images that NIOSH has posted online. The American College of Radiology runs a B-reading course. Dr. Meyer has participated in the course previously in studying for the examination and was recently asked to have a more active academic role in creating the new syllabus and designing the new B-reader exam. Dr. Meyer is currently co-director of the ACR B-reader course 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. (Respondent's Exhibit No. 1, p. 33).

Dr. Meyer testified that the B-reading training course was a weekend training course in which there were a series of lectures describing the B-reading classification system. The course participants would then review a series of practice examples with mentors overseeing the practice examples. Dr. Meyer testified that the faculty for the course are typically experienced senior level B-readers who have been involved in the process for quite some time. (Respondent's Exhibit No. 1, pp. 33-34). Dr. Meyer testified that typically after one takes the B-reading course, he takes the B-reader 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 percent. The current exam is 24 multiple choice questions and 72 cases in five hours. (Respondent's Exhibit No. 1, p. 35). Dr. Meyer testified that generally radiologists have about ten percent higher pass rate than other specialties. In Dr. Meyer's opinion radiologists have a better sense of what the variation of normal is. (Respondent's Exhibit No. 1, pp. 35-36). 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 the distinction between a 1/0 versus a 0/1 is a critical component of the B-reader examination and is a point of emphasis in the B-reading course as well. (Respondent's Exhibit No. 1, p. 36).

Dr. Meyer testified that the B-reader looks at chest x-rays of the lungs and first evaluates the quality of the film. (Respondent's Exhibit No. 1, p. 24). Dr. Meyer testified that it is important to grade the film before reading it because there are certain levels of underexposure that are considered unreadable in that they make it so a B-reader cannot decide whether or not the lung is involved. Dr. Meyer testified that when a film is underexposed it tends to accentuate the pulmonary vasculature and a B-reader must be careful not to mistake that for a nodule or opacity. Dr. Meyer

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testified that if a film is overexposed that means it is too dark and it can artificially make all small opacities disappear. (Respondent's Exhibit No. 1, pp. 28-29). Dr. Meyer testified that the B-reader looks at the lungs to decide whether there are small nodular opacities and based on the size and appearance of the small opacities they are given a letter score. (Respondent's Exhibit No. 1, p. 24). 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. (Respondent's Exhibit No. 1, pp. 29-30). The distribution of the opacities is also described because different pneumoconiosis 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. (Respondent's Exhibit No. 1, pp. 24-25). Dr. Meyer testified that profusion is basically trying to describe the density of the small opacities in the lung. (Respondent's Exhibit No. 1, pp. 31-32).

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. (Respondent's Exhibit No. 1, p. 48). Dr. Meyer testified that when he performs a B-reading, he just wants to look at the film and answer the simple question: Is there anything on there that is consistent with the abnormalities of coal workers' pneumoconiosis. He testified that his assumption when he is asked to do a B-reading is that the worker has an appropriate exposure history to warrant having a chest x-ray. (Respondent's Exhibit No. 1, pp. 48-49). 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. (Respondent's Exhibit No. 1, pp. 50-51). Dr. Meyer testified that when he was reading films two days a week, he reads between 150 to 200 chest x-rays in a week and depending upon the business of the service, he reads 50 to 70 chest CT scans. (Respondent's Exhibit No. 1, pp. 16-17).

Dr. David Rosenberg conducted a review of medical records and chest imaging regarding Petitioner at the request of Respondent's counsel. (Respondent's Exhibit No. 3, p. 11). Dr. Rosenberg has been board certified in internal medicine since 1977. After graduating from medical school, he did a pulmonary fellowship at the National Institute of Health in Bethesda, Maryland. Dr. Rosenberg received his board certification in pulmonary disease in 1980. (Respondent's Exhibit No. 3, pp. 4-5). In 1995, he received his board certification in occupational medicine. (Respondent's Exhibit No. 3, p. 5). Dr. Rosenberg has been a B-reader since July 2000. He is a member of the American Thoracic Society and the American College of Chest Physicians. (Respondent's Exhibit No. 3, p. 7). 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. (Respondent's Exhibit No. 3, p. 9). Dr. Rosenberg has patients in his clinical practice he is treating who have black lung. (Respondent's Exhibit No. 3, p. 10).

Dr. Rosenberg reviewed a chest x-ray for Petitioner dated April 7, 2023, from Harrisburg Medical Center. He noted that the film quality was 1. He gave a profusion rating of 0/0 for the presence of any parenchymal changes. (Respondent's Exhibit No. 3, p. 42). Dr. Rosenberg testified that when he interprets a chest x-ray for coal workers' pneumoconiosis, he does it side-by-side with the standard ILO films. Dr. Rosenberg testified that he conducted this side-by-side review when reading Petitioner's film. (Respondent's Exhibit No. 3, pp. 42-43). Dr. Rosenberg reviewed a CT scan of the chest dated August 8, 2023, from Springfield Clinic. Dr. Rosenberg testified the CT scan revealed no micronodularity or parenchyma changes of pneumoconiosis. He observed mild emphysematous changes. He testified that CTs are more sensitive in picking up diseases of the lung than chest x-rays are. (Respondent's Exhibit No. 3, p. 42).

Dr. Rosenberg testified that it is unlikely for simple pneumoconiosis to progress once the exposure ceases. Dr. Rosenberg agrees with the American Thoracic Society that an older worker with a mild pneumoconiosis may be at low risk for working in the mine at currently permissible dust levels until he reaches retirement age. (Respondent's Exhibit No. 3, p. 43). 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. (Respondent's Exhibit No. 3, p. 34). Dr. Rosenberg testified that to determine whether a person suffers from pulmonary impairment one would want, if available, spirometry, diffusion capacity, lung volumes, and some measure of gas exchange. (Respondent's Exhibit No. 3, p. 33). Dr. Rosenberg testified that an individual needs to be a susceptible host to develop coal workers' pneumoconiosis. He testified that not all coal miners develop pneumoconiosis and only a minority develop same. (Respondent's Exhibit No. 3, pp. 35-36). Dr. Rosenberg testified that the intensity or the duration of exposure for the individual is not important if the individual is not a susceptible host. He testified that those individuals are not going to develop the disease. (Respondent's Exhibit No. 3, p. 36). Dr. Rosenberg testified that the Vallyathan study found there was a concordance of around 70% between chest x-ray evidence and pathologic evidence of pneumoconiosis. Dr. Rosenberg testified that given a concordance rate of 70%, it is more likely than not that if one has pathologic evidence of disease, he will also have radiographic evidence of pneumoconiosis. (Respondent's Exhibit No. 3, pp. 36-37).

Dr. Rosenberg testified that the results from the pulmonary function testing performed on Petitioner at Stat-Care on December 6, 2023 were normal. He testified there was no evidence of obstruction or restriction. Dr. Rosenberg testified that the spirometry lacked validity because the variability was greater than would be acceptable for absolute standard for a valid test. (Respondent's Exhibit No. 3, p. 37). He testified that the absolute values were still very normal, and one cannot fake normal. Dr. Rosenberg testified that if Table 5-4 was applied to the results from Petitioner's testing, he would be under class 0. He testified that spirometry is effort dependent and to be able to use the test clinically, they need to be performed with complete effort. Dr. Rosenberg testified that the lower spirometry results recorded by Dr. Istambouly six months earlier could be attributed to either reduced effort by the Petitioner during testing or the occurrence of a bronchospasm at the time of the examination. (Respondent's Exhibit No. 3, pp. 38-39).

Dr. Rosenberg testified that Petitioner's diffusion capacity was normal, indicating no impairment in gas exchange or damage to the alveolar capillary bed. He explained that conditions like interstitial lung disease or emphysema, if significant enough, would reduce diffusion capacity by damaging this area of the lungs. However, Petitioner's test at Stat-Care on December 6, 2023,

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showed a diffusion capacity of 105 percent, which is totally normal. (Respondent's Exhibit No. 3, pp. 40-41). Dr. Rosenberg testified that based upon his medical review, Petitioner was capable of heavy manual labor from a respiratory standpoint. (Respondent's Exhibit No. 3, p. 41). Dr. Rosenberg testified that Petitioner suffers from significant heart disease and cardiomyopathy. He testified that there is a direct correlation between heart disease and exertional shortness of breath. He testified that the heart and lungs work in tandem and to evaluate someone for shortness of breath, one must do a thorough cardiac evaluation to figure out which part of the component is causing the problem leading to the shortness of breath. (Respondent's Exhibit No. 3, pp. 41-42).

Dr. Rosenberg testified that Petitioner has been determined radiographically to have a mild degree of emphysema, without parenchymal changes of pneumoconiosis. He testified Petitioner's pulmonary function tests, at worst, reveal very minimal airflow obstruction, with his spirometric values being above the lower limits of normal. He testified that Petitioner has had a series of low-dose screening CT scans of the chest because of his long and extensive smoking history, and he clearly does not have parenchymal changes of a pneumoconiosis and micronodularity. (Respondent's Exhibit No. 3, p. 44). Dr. Rosenberg testified that Petitioner's chest x-rays overall do not reveal parenchymal changes of a pneumoconiosis. He testified Petitioner's recent pulmonary function studies demonstrated values well above the lower limits of normal and he is considered to have class 0 impairment based on the 6th Edition *Guides*. Dr. Rosenberg testified that Petitioner has had chronic sinusitis and intermittent bronchitis, but these do not represent chronic conditions related to his coal mine employment. Dr. Rosenberg concluded that Petitioner does not have a respiratory disorder which relates to his past coal mine dust exposure, and he is not disabled from a pulmonary perspective. (Respondent's Exhibit No. 3, pp. 44-45).

Medical Records of Stat-Care were admitted into evidence. Pulmonary function testing performed on December 6, 2023, revealed forced vital capacity of 4.50L (117%), FEV1 of 3.12L (101%) and an FEV1/FVC ratio of 69, 86% of predicted. Diffusing capacity testing revealed DLCO of 28.33mL/min/mmHg (105%). (Respondent's Exhibit No. 2, p. 2). The interpretation was normal spirometry and normal diffusion capacity. (Respondent's Exhibit No. 2, p. 4).

Medical Records of Springfield Clinic were admitted into evidence. Petitioner is seen on September 28, 1979, for allergy symptoms. It was noted that allergy testing revealed marked reactivity to seasonal and nonseasonal inhalants with perennial symptoms. The diagnosis was allergic rhinitis. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, p. 426). Petitioner was seen on February 24, 1986, for right wrist swelling. Petitioner was seen on May 5, 1986, for eye injury from fist fight. (Respondent's Exhibit No. 4, p. 425). Petitioner was seen on June 9, 1986, for back pain. (Respondent's Exhibit No. 4, p. 424). Petitioner was seen on May 15, and 17, 1989 for eye irritation. (Respondent's Exhibit No. 4, p. 423-424). Petitioner was seen on June 16, and 23, 1989, for right arm pain. (Respondent's Exhibit No. 4, p. 423). Petitioner was seen on September 20, 1989, for neck pain. (Respondent's Exhibit No. 4, p. 422). Petitioner was seen on January 26, February 23, March 1, and April 5, 1990, for lumbar spine pain. (Respondent's Exhibit No. 4, pp. 417-422). Petitioner was seen on April 12, 1990, for bone scan results regarding low back pain. (Respondent's Exhibit No. 4, p. 416). Petitioner was seen on August 1, 1990, for back pain. (Respondent's Exhibit No. 4, p. 420). Petitioner was seen on August 22, and September 5, 1990, for back pain. (Respondent's Exhibit No. 4, p. 415). Petitioner was seen on November 9, 1990, for history of allergy problems and productive cough. (Respondent's Exhibit No. 4, p. 414). Petitioner was seen on April 22, 24, 29, and May 20, 1991, for right back

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pain. (Respondent's Exhibit No. 4, pp. 412-414). Petitioner was seen on September 11 and 12, 1991, for abrasion on left eye. (Respondent's Exhibit No. 4, p. 411). Petitioner was seen on January 10, 1992, for gastritis complaints for several days. Petitioner was seen on January 17, 1992, for epigastric symptoms. Petitioner was seen on July 15, 1992, for left wrist sprain. (Respondent's Exhibit No. 4, p. 410). Petitioner was seen on January 1, 11, 12, 22, 18, and 27, 1993, for left knee pain. (Respondent's Exhibit No. 4, pp. 406-409).

Petitioner was seen on December 27, 1993, for car accident and cold symptoms. Examination of chest revealed lungs were clear. (Respondent's Exhibit No. 4, p. 406). Petitioner was seen on February 1, 1994, for work injury two weeks prior. (Respondent's Exhibit No. 4, p. 405). Petitioner was seen on February 22, 1994, for right ankle injury. (Respondent's Exhibit No. 4, p. 404). Petitioner was seen on December 6, 1994, for nonproductive cough for one week. Examination of chest revealed lungs clear except for a few rhonchi that clear with cough. Assessment is acute sinusitis. (Respondent's Exhibit No. 4, p. 403). Petitioner was seen on January 17, 1995, for a thumb injury. (Respondent's Exhibit No. 4, p. 402). Petitioner was seen for right wrist pain related to work accident. (Respondent's Exhibit No. 4, p. 401). Petitioner was seen on January 29, 1996, for wrist injury. (Respondent's Exhibit No. 4, p. 404). Petitioner was seen on August 2, 1996, for right shoulder pain. (Respondent's Exhibit No. 4, p. 400). Petitioner was seen on February 2, 1998, for vasectomy. Petitioner was seen on February 20, 1998, for vasectomy follow-up. Petitioner was seen on July 22, 1998, for UTI. Examination of chest revealed lungs clear to auscultation. Petitioner was seen on July 27, 1998, for UTI follow-up. (Respondent's Exhibit No. 4, pp. 399-400). Petitioner was seen on December 27, 1998, for headache, nausea, and fever for two weeks. He reported a cough. Chest x-ray revealed some congestion and possible pneumonia. (Respondent's Exhibit No. 4, p. 397). Petitioner underwent chest x-ray for fever, congestion, and headaches on December 28, 1998. Same was negative. Petitioner was seen on December 30, 1998, for UTI. (Respondent's Exhibit No. 4, p. 393). Petitioner was seen on November 17, 1999, for back pain for one week. (Respondent's Exhibit No. 4, p. 395).

Petitioner was seen on May 31, 2000, for low back pain for two weeks. (Respondent's Exhibit No. 4, p. 392). Petitioner was seen on August 15, 2000, for rash. Examination of chest revealed lungs clear auscultation. (Respondent's Exhibit No. 4, p. 391). Petitioner was seen on October 28, 2000, for low back pain for 4-5 weeks. (Respondent's Exhibit No. 4, p. 390). Petitioner was seen on February 18, 2002, for Driver Fitness Determination. Examination of chest revealed no abnormal findings. (Respondent's Exhibit No. 4, pp. 386-389). Petitioner was seen on July 16, 2003, for DOT physical. He reported he had no particular health problems. Examination of chest revealed lungs clear to auscultation. Petitioner was given 2-year certificate. (Respondent's Exhibit No. 4, p. 385). Petitioner was seen on August 18, 2004, for left hand pain. (Respondent's Exhibit No. 4, p. 384). Petitioner was seen on August 25, 2004, for right wrist injury. (Respondent's Exhibit No. 4, p. 383). Petitioner was seen on February 28, 2007, for lump on back of head. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, p. 382). Petitioner was seen on April 26, 2006, for evaluation of neck mass. (Respondent's Exhibit No. 4, p. 378). Petitioner was seen on December 25, 2008, for headache. Examination of chest revealed lungs were clear. (Respondent's Exhibit No. 4, p. 375). Petitioner was seen on January 6, 2009, for headache. (Respondent's Exhibit No. 4, p. 373). Petitioner was seen on February 9, 2009, for hepatitis C. Review of systems respiratory was negative for cough and wheezing. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 369-370). Petitioner was seen on March 9, 2009, for hepatitis C. Examination of chest revealed lungs clear to

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auscultation. (Respondent's Exhibit No. 4, p. 367). Petitioner was seen on June 8, 2009, for high blood pressure. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, p. 366). Petitioner was seen on May 25, 2010, for LLQ pain. Examination of chest revealed lungs were clear. (Respondent's Exhibit No. 4, p. 364).

Petitioner was seen on January 6, 2011, for left foot pain. (Respondent's Exhibit No. 4, p. 360). Petitioner was seen on January 11, 2011, for left heel pain. Review of systems respiratory was negative for cough, shortness of breath, and wheezing. (Respondent's Exhibit No. 4, p. 358). Petitioner was seen on February 14, 2011, and March 15, 2011, for left heel pain. (Respondent's Exhibit No. 4, pp. 355-356). Petitioner was seen on May 11, 2011, for left arm pain for two months. Petitioner was seen on May 16, 2011, for heel pain. (Respondent's Exhibit No. 4, p. 352). Petitioner was seen on May 2, 2014, for trouble breathing and cough. Examination of chest revealed lungs were clear. (Respondent's Exhibit No. 4, p. 349). Petitioner was seen on October 21, 2014, for jaw popping. Review of systems respiratory was negative for dyspnea and positive for chronic cough. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 347-348). Petitioner was seen on October 29, 2014, for jaw pain. Review of systems respiratory was negative for dyspnea and positive for long-term cough. Examination of chest revealed posterior upper lung fields had coarse crackles upon expiration. Assessment was acute sinusitis. (Respondent's Exhibit No. 4, pp. 343-344).

Petitioner was seen on February 3, 2015, for worsening shortness of breath. Review of systems respiratory was positive for dyspnea and mild-nonproductive cough. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 323-324). Petitioner underwent chest x-ray. Same revealed no acute pulmonary findings. (Respondent's Exhibit No. 4, p. 342). Petitioner was seen on February 25, 2015, for shortness of breath. Examination of chest revealed lungs to be notable for the presence of some mild bilateral rhonchi. Wheezes in the upper lobes were noted. (Respondent's Exhibit No. 4, pp. 334-335). Pulmonary function test revealed FVC of 4.39L (87%), FEV1 of 3.37L (86%), and an FEV1/FVC ratio of 77. (Respondent's Exhibit No. 4, pp. 337-338). Petitioner was seen on February 27, 2015, for shortness of breath. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 331-332). Petitioner underwent chest CT. Impression was no worrisome pulmonary nodules or pulmonary infiltrates; Mild pulmonary emphysema; Bilateral adrenal nodules which are indeterminate. (Respondent's Exhibit No. 4, p. 333). Petitioner was seen on March 4, 2015, for evaluation of shortness of breath. Examination of chest revealed lungs notable for marked slightly diminished breath sounds. (Respondent's Exhibit No. 4, pp. 323-324). Petitioner underwent stress test. Same revealed abnormal LV function and no evidence of ischemia. (Respondent's Exhibit No. 4, p. 325A). Petitioner underwent echocardiogram. Same revealed an ejection fraction of 33% as well as mild left ventricular diastolic dysfunction. (Respondent's Exhibit No. 4, p. 327). Petitioner was seen on March 10, 2015. Review of systems respiratory was negative for cough. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 318-319). Petitioner underwent angiogram on March 13, 2015. Same revealed coronaries are angiographically normal. There is slow flow in LAD and RCA. (Respondent's Exhibit No. 4, p. 317). Petitioner was seen on March 25, 2015, for congestive heart failure. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, p. 315). Petitioner underwent echocardiogram on April 22, 2015. Same revealed an ejection fraction of 36%. (Respondent's Exhibit No. 4, p. 312). Petitioner was seen on April 22, 2015, for congestive heart failure. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 310-311). Petitioner was seen on July

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29, 2015, for congestive heart failure. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 305-306). Petitioner underwent echocardiogram. Same revealed ejection fraction of 45%. (Respondent's Exhibit No. 4, p. 307). Petitioner was seen on September 4, 2015, for evaluation of mild emphysema. He denied shortness of breath with daily activities. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 302-303). Petitioner was seen on October 29, 2015, for dizziness. Review of systems respiratory was positive for long-term dyspnea, negative for cough. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 298-299). Petitioner was seen on December 16, 2015, for follow-up of congestive heart failure. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 293-294). Petitioner underwent echocardiogram. Interpretation was left ventricular systolic function is low normal; Ejection fraction is 50-55%. (Respondent's Exhibit No. 4, p. 295).

Petitioner was seen on January 27, 2016, for dizziness. Review of systems respiratory was negative for cough, wheezing and shortness of breath. (Respondent's Exhibit No. 4, pp. 290-291). Petitioner was seen on February 9, 18, 25, and March 10, 2016, for physical therapy related to dizziness. (Respondent's Exhibit No. 4, pp. 285-289). Petitioner was seen March 21, 2016, for tick bite and dizziness. Review of systems respiratory was positive for dyspnea on exertion. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 281-282). Petitioner underwent MRI of cervical spine on March 31, 2016. Impression was cervical spondylosis worst at C5-6 and C6-7. (Respondent's Exhibit No. 4, pp. 279-280). Petitioner was seen on April 15, 2016, for dizziness. Review of systems respiratory was negative for cough, wheezing and shortness of breath. (Respondent's Exhibit No. 4, p. 275). Petitioner was seen April 18, 2016, for neck pain. (Respondent's Exhibit No. 4, p. 272). Petitioner underwent cervical x-ray which concluded degenerative narrowing of C5-6 and C6-7 intervertebral disc space and no abnormal movement during flexion. (Respondent's Exhibit No. 4, p. 274). Petitioner was seen on April 22, 2016, for hypertension and dizziness. He reported no new symptoms. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 269-270). Petitioner was seen on May 2, 2016, for dizziness. (Respondent's Exhibit No. 4, p. 266). Petitioner was seen on June 29, 2016, for possible sinus surgery. Assessment was chronic sinusitis. (Respondent's Exhibit No. 4, pp. 260-261). Petitioner was seen on July 18, 2016, for H&P for sinus surgery. Review of systems respiratory was positive for chronic shortness of breath which Petitioner believed was due to congestive heart failure. Examination of chest revealed lungs were clear to auscultation. (Respondent's Exhibit No. 4, pp. 255-256). Petitioner underwent chest x-ray with impression of no acute pulmonary finding. (Respondent's Exhibit No. 4, p. 258). Petitioner was seen on August 5, 2016, for bilateral endoscopic sinus surgery. Review of systems respiratory was negative for shortness of breath and dyspnea on exertion. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 249-252). Petitioner was seen on August 8, 2016, for post op septoplasty. Review of systems respiratory was negative for pulmonary symptoms. (Respondent's Exhibit No. 4, pp. 247-248). Petitioner was seen on August 17, 2016, for follow-up from sinus surgery. Review of systems respiratory was negative for pulmonary symptoms. (Respondent's Exhibit No. 4, pp. 245-246). Petitioner was seen on August 31, 2016, for a recheck from sinus surgery. Review of systems respiratory was negative for pulmonary symptoms. (Respondent's Exhibit No. 4, pp. 243-244). Petitioner was seen on October 20, 2016, for dizziness. Review of systems respiratory was negative for cough, dyspnea, and wheezing.

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Examination of chest revealed lungs are clear to auscultation. (Respondent's Exhibit No. 4, pp. 240-242).

Petitioner was seen on January 5, 2017, for follow-up on previous cardiac work-up. Examination of chest revealed lungs clear to auscultation. Assessment was benign essential hypertension, chronic congestive heart failure, and dizziness. (Respondent's Exhibit No. 4, pp. 235-236). Echocardiogram revealed an ejection fraction of 40-45%. (Respondent's Exhibit No. 4, p. 237). Petitioner was seen on June 19, 2017, for benign paroxysmal positional vertigo for three years. Review of systems respiratory was negative for cough, dyspnea, and wheezing. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 230-234). Petitioner was seen on September 18, 2017, for thumb pain for several months. Review of systems respiratory was negative for cough, dyspnea, and wheezing. (Respondent's Exhibit No. 4, pp. 226-228). Petitioner was seen on October 9, 2017, for dizziness for three years. He denied any new symptoms. (Respondent's Exhibit No. 4, p. 223). Petitioner was seen on October 30, 2017, for cough, chest congestion and shortness of breath for 2 months. Examination of chest revealed prominent wheezing. Review of systems respiratory was negative for cough and dyspnea. (Respondent's Exhibit No. 4, pp. 220-221).

Petitioner was seen for annual visit on January 9, 2018. Examination of chest revealed lungs clear to auscultation. Assessment was shortness of breath. (Respondent's Exhibit No. 4, pp. 213-215). Petitioner underwent Lexiscan nuclear cardiac stress test on January 23, 2018, and conclusion was negative for ischemia and LV function normal. (Respondent's Exhibit No. 4, p. 210). Petitioner was seen on December 20, 2018, for history of presumed heart failure with reduced ejection fraction, COPD, obesity, and history of chronic dizziness. Petitioner felt his breathing had become worse over the past year. Review of systems respiratory was positive for cough and shortness of breath. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 197-200). Petitioner underwent pulmonary function test on January 10, 2019, which revealed FVC of 4.29L (93%), FEV1 of 3.24L (87%), and an FEV1/FVC ratio of 76. Impression was normal pulmonary function test. (Respondent's Exhibit No. 4, pp. 193-195). Petitioner underwent sleep study due to history of snoring, poor quality sleep, and heart disease. Severe obstructive sleep apnea was confirmed. (Respondent's Exhibit No. 4, pp. 191-192). Petitioner was seen on February 12, 2019. Petitioner stated he worked second shift from 2:00 PM until 12:00 AM, 4 days a week. Examination of lungs revealed some mild rhonchi and mild wheezing. (Respondent's Exhibit No. 4, pp. 184-188). Petitioner was seen on April 12, 2019. He underwent screening lung CT which demonstrated some mild emphysematous changes but there were no worrisome nodules. Examination of lungs revealed Petitioner moves air reasonably well and no wheezing. (Respondent's Exhibit No. 4, pp. 180-182). Petitioner was seen on October 22, 2019, as a new patient for arthritis of hands. Review of systems respiratory was negative for shortness of breath and cough. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 170-171). Petitioner underwent x-rays of the hands, and impression was osteoarthritis. (Respondent's Exhibit No. 4, p. 176). Petitioner was seen on December 12, 2019. He complained of exertional breathlessness and dizziness. Review of systems respiratory was positive for shortness of breath and negative for cough. Examination of chest revealed the lungs were clear to auscultation. Diagnoses were chronic heart failure with chronic preserved ejection fraction, dyspnea on exertion and dizziness. (Respondent's Exhibit No. 4, pp. 160-163).

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Petitioner was seen on January 16, 2020, for chest pain for seven hours. Examination of chest revealed lungs clear in all fields. (Respondent's Exhibit No. 4, p. 157). Petitioner was admitted to the hospital from January 16, 2020, until January 19, 2020. Admitting and Discharge diagnoses were non-ST-elevation myocardial infarction (NSTEMI). Examination of lungs revealed same were clear to auscultation at discharge. (Respondent's Exhibit No. 4, pp. 129-131). On admission, examination of chest revealed lungs were clear to auscultation. (Respondent's Exhibit No. 4, p. 140). Petitioner underwent chest x-ray on January 6, 2020, and the impression was negative chest x-ray. (Respondent's Exhibit No. 4, p. 137). Petitioner was seen January 22, 2020, for preventative health exam. Examination of chest revealed lungs clear to auscultation. Review of systems respiratory was negative for cough and dyspnea. (Respondent's Exhibit No. 4, pp. 123-124). Petitioner was seen on February 6, 2020. Review of systems respiratory was negative for cough and new or worsening shortness of breath. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 4, pp. 115-116). Petitioner was seen on April 17, 2020, for follow-up CT. There were no worrisome abnormalities other than mild emphysematous changes. (Respondent's Exhibit No. 4, p. 106). Pulmonary function test revealed FVC of 4.11L (84%), FEV1 of 3.13L (84%), and an FEV1/FVC ratio of 76. (Respondent's Exhibit No. 4, pp. 110-111). Dr. Abraham interpreted same as revealing no definitive obstruction or restriction, normal spirogram. (Respondent's Exhibit No. 4, p. 108). Petitioner was seen on April 30, 2020. Review of systems respiratory was positive for shortness of breath with exertion and negative for cough. Examination of chest revealed lungs clear to auscultation. Diagnosis was coronary artery disease, myocarditis, and dyspnea on exertion. (Respondent's Exhibit No. 4, pp. 94-97). Petitioner was seen on July 17, 2020, for bipap follow-up. Petitioner's breathing appeared normal. (Respondent's Exhibit No. 4, pp. 89-92). Petitioner was seen on December 4, 2020, and examination of chest was clear to auscultation. (Respondent's Exhibit No. 4, p. 83). Review of systems respiratory was negative for cough and new or significant shortness of breath. (Respondent's Exhibit No. 4, pp. 72-75).

Petitioner was seen on April 1, 2021, for sinus congestion. Examination of lungs revealed same were clear to auscultation. (Respondent's Exhibit No. 4, pp. 68-69). Petitioner was seen on April 20, 2021, and underwent screening CT of the chest. Impression was no suspicious pulmonary nodule. Mild pulmonary emphysema is noted. (Respondent's Exhibit No. 4, p. 55). Petitioner was seen on November 14, 2021, for right foot laceration. Review of systems respiratory was negative for cough and dyspnea. (Respondent's Exhibit No. 4, p. 55). Petitioner was seen on December 6, 2021, for heart failure with preserved ejection fraction. Petitioner stated he was working in a farm equipment job which is active, and he was able to perform all of his duties without problems. Review of systems respiratory was negative for cough, new or significant shortness of breath. Examination of chest revealed lungs were clear to auscultation. (Respondent's Exhibit No. 4, pp. 45-48). Petitioner was seen on May 31, 2022, and examination of chest revealed lungs were clear to auscultation. (Respondent's Exhibit No. 4, p. 42).

Petitioner was seen on March 10, 2023. Review of systems respiratory was positive for shortness of breath with exertion and at night. Same was negative for cough. Examination of the chest revealed lungs were clear to auscultation. Assessment was coronary artery disease, chronic heart failure, hypertension and shortness of breath. (Respondent's Exhibit No. 4, pp. 34-36). Petitioner was seen on March 27, 2023, for bipap follow-up. Examination of lungs was clear bilaterally. (Respondent's Exhibit No. 4, pp. 29-32). Petitioner was seen on August 8, 2023, for follow-up CT of the chest. He denied any new or progressive respiratory symptoms. Petitioner

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underwent CT which revealed no new or enlarging pulmonary nodule. Same revealed pulmonary emphysema. (Respondent's Exhibit No. 4, pp. 16-19). Pulmonary function test revealed FVC of 3.79L (81%), FEV1 of 2.86L (79%), and an FEV1/FVC ratio of 76. Interpretation is spirogram demonstrates no significant obstructive or restrictive ventilatory impairment. Treatment records noted that the spirogram came back normal and demonstrates no evidence of COPD. (Respondent's Exhibit No. 4, pp. 20, 26). Petitioner was seen on April 23, 2024, for allergy evaluation and sinus polyps. The provider noted that Petitioner's shortness of breath was due to his congestive heart failure. Review of systems respiratory was negative for wheeze, cough, and shortness of breath. Examination of chest revealed lungs clear to auscultation and percussion bilaterally. (Respondent's Exhibit No. 4, pp. 9-13). On August 9, 2024, Petitioner underwent low dose CT of the chest for 30 pack year history of smoking. Impression was no worrisome pulmonary nodule. (Respondent's Exhibit No. 4, p. 3). He was seen in office on the same date and denied any new or progressive respiratory symptoms. (Respondent's Exhibit No. 4, p. 7).

Medical Records of Prairie Cardiovascular were admitted into evidence. Petitioner was seen on May 31, 2022, for initial consultation regarding sleep apnea. Review of systems respiratory revealed no hemoptysis and sputum is not excessive. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 5, p. 55). Petitioner underwent lung screening CT. Impression was no suspicious pulmonary nodule, Mild pulmonary emphysema was noted. (Respondent's Exhibit No. 5, p. 56). Petitioner was seen on March 10, 2023. Review of systems respiratory was positive for shortness of breath with exertion and wheezing but negative for cough. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 5, pp. 40-41). Petitioner was seen on March 27, 2023, for bipap follow-up. Examination of chest revealed lungs were clear. Petitioner was seen on March 12, 2024, for history of viral myocarditis. He stated he was doing well. Review of systems respiratory was negative for cough and new or significant shortness of breath. Examination of chest revealed lungs clear to auscultation. Diagnosis is coronary artery disease. (Respondent's Exhibit No. 5, pp. 20-22). Petitioner was seen on April 19, 2024, for history of viral myocarditis. Review of systems respiratory was positive for shortness of breath with exertion and wheezing but negative for cough. Examination of chest revealed the lungs clear to auscultation. (Respondent's Exhibit No. 5, pp. 7-9).

Medical Records of Dr. Stanley Noll were admitted into evidence. Pulmonary function test performed on September 4, 2015, revealed FVC 4.32L (88%), FEV1 3.44L (88%), and FEV1/FVC ratio of 80. (Respondent's Exhibit No. 6, p. 229). Petitioner is seen on June 8, 2017, for dizziness. Review of systems respiratory is negative for cough, dyspnea, and wheezing. Examination of chest reveals lungs clear to auscultation. (Respondent's Exhibit No. 6, pp. 217-219). Petitioner was seen on June 9, 2018, for annual exam. He reported he still experienced shortness of breath with exertion. Examination of chest revealed lungs clear to auscultation. Petitioner underwent sleep evaluation on January 18, 2019, which revealed he had severe obstructive sleep apnea. (Respondent's Exhibit No. 6, p. 18). Petitioner was seen on December 16, 2019, for possible sinus infection. Petitioner had no respiratory complaints. Examination of lungs revealed normal breath sounds throughout (Respondent's Exhibit No. 6, pp. 158-159).

Petitioner was seen on April 22, 2020. Examination reveals lungs to be clear to auscultation. Petitioner underwent echocardiogram on May 15, 2020, which revealed an ejection fraction of 64%. Petitioner was seen on November 22, 2021, for laceration of right foot. Review of systems respiratory was negative for cough, dyspnea, and wheezing. Petitioner was seen on

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February 9, 2022, to establish care. Review of systems respiratory was negative for cough and shortness of breath. Examination of lungs revealed same to be clear to auscultation. (Respondent's Exhibit No. 6, pp. 60-62). Petitioner was seen on March 9, 2022, for knee pain. Review of systems respiratory was negative for cough and shortness of breath. Examination of lungs revealed same to be clear to auscultation. X-ray was ordered. (Respondent's Exhibit No. 6, pp. 51-52). Petitioner was seen on March 1, 2023, for upper respiratory congestion, drainage, cough and shortness of breath for ten days. Examination of lungs revealed same to be clear to auscultation. (Respondent's Exhibit No. 6, pp. 48-49). Petitioner was seen on March 28, 2023, for DOT physical exam. It was noted that Petitioner meets standards, but required annual monitoring due to hypertension, myocarditis, myocardial infarction, and sleep apnea. (Respondent's Exhibit No. 6, pp. 36-41). Petitioner was seen on June 30, 2023, for annual visit. Review of systems respiratory was negative for cough, shortness of breath, and wheezing. Examination of lungs revealed same to be clear to auscultation. (Respondent's Exhibit No. 6, pp. 31-33).

Petitioner was seen on March 15, 2024, for skin lesion on back. Review of systems respiratory was negative for cough and shortness of breath. Examination of lungs revealed same to be clear to auscultation. (Respondent's Exhibit No. 6, pp. 16-18). Petitioner underwent brain MRI on March 30, 2024, for dizziness and double vision for ten years. Impression was no acute intracranial process and severe diffuse paranasal sinus opacification. (Respondent's Exhibit No. 6, pp. 12-14). Petitioner was seen on April 11, 2024, for dizziness. Review of systems respiratory was positive for dyspnea on exertion and shortness of breath. Examination of chest revealed lungs clear to auscultation. (Respondent's Exhibit No. 6, pp. 8-10). Petitioner was seen on May 1, 2024, for skin lesion. Review of systems respiratory was negative for chest pain, cough, and shortness of breath. (Respondent's Exhibit No. 6, pp. 6-7). Petitioner was seen on September 5, 2024, for dizzy spells. Review of systems respiratory was negative for cough, shortness of breath, and wheezing. Examination of lungs revealed same to be clear to auscultation. (Respondent's Exhibit No. 6, pp. 3-5).

Records of NIOSH were admitted into evidence. A chest x-ray of November 22, 2005, was interpreted by B-reader Ralph Shipley as having no parenchymal nor pleural abnormalities consistent with pneumoconiosis. (Respondent's Exhibit No. 7, p. 3). A B-reader Akshay Sood interpreted this chest x-ray as completely negative. (Respondent's Exhibit No. 7, p. 5). A chest x-ray of March 24, 2009, was interpreted by B-reader James Smith as being completely negative. (Respondent's Exhibit No. 7, p. 7). A B-reader Allen Forry interpreted this chest x-ray as completely negative. (Respondent's Exhibit No. 7, p. 9). A chest x-ray of August 7, 2013, was interpreted by B-reader George Delclos as being completely negative. (Respondent's Exhibit No. 7, p. 11). A B-reader Jeffrey Kanne interpreted this chest x-ray as having no parenchymal nor pleural abnormalities. (Respondent's Exhibit No. 7, pp. 13).

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?

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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 or that his current condition of ill-being is causally related to occupational exposure.

In support of these conclusions, the Arbitrator notes the following:

Dr. Istambouly examined Petitioner on June 20, 2023, at the request of Petitioner's attorney and diagnosed him with coal workers' pneumoconiosis and COPD. However, the Arbitrator assigns less weight to Dr. Istambouly's conclusions because he did not personally review any of Petitioner's chest x-rays or treatment records. Instead, his diagnosis relied on the B-reading report from Dr. Henry Smith, who interpreted the April 7, 2023, chest x-ray as showing pneumoconiosis with p/p opacities in the upper and mid zones bilaterally, profusion 1/0. Dr. Istambouly's reliance on another physician's interpretation, without conducting his own independent review of the imaging or numerous interpretations of chest imaging in the treatment records, undermines the credibility of his findings. This is particularly significant given his own testimony that he prefers to personally review chest x-rays as part of his diagnostic process and considers it a helpful component of a thorough evaluation.

Petitioner's work history in the coal mines spans approximately sixteen years. In an attempt to extend this exposure period, Dr. Istambouly relied on Petitioner's account of working 9 to 10 hours per shift, 5 days a week. However, this conflicts with prior medical records, where Petitioner reported to Dr. Abraham that he worked 10-hour shifts, 4 days a week. Based on the longer hours Petitioner claimed, Dr. Istambouly estimated his cumulative exposure to coal dust was equivalent to 18 to 20 years of underground mining. Yet, both Dr. Istambouly and Dr. Rosenberg emphasized that exposure alone is insufficient to cause coal workers' pneumoconiosis. They agreed that an individual must be a "susceptible host" to develop the disease. Dr. Rosenberg further clarified that the duration or intensity of exposure is irrelevant if the miner lacks this susceptibility, and he noted that only a minority of miners develop coal workers' pneumoconiosis. Given these medical opinions and the conflicting exposure history, the evidence makes it less likely that Petitioner has coal workers' pneumoconiosis.

Dr. Christopher Meyer, a board-certified radiologist and experienced B-reader, personally reviewed two chest x-rays of Petitioner dated April 7, 2023. He testified that both x-rays were of quality 1 and showed no radiographic evidence of coal workers' pneumoconiosis. The only abnormality Dr. Meyer observed was a line of plate atelectasis in the left costophrenic angle, with the remainder of the lungs appearing clear. Dr. Meyer also reviewed a chest CT scan dated August 8, 2023, which he similarly interpreted as negative for coal workers' pneumoconiosis. This interpretation is in accord with the clinic radiologist's interpretation of this study. Dr. Meyer testified that CT scans are more sensitive than chest x-rays in detecting lung disease and are considered the "gold standard" diagnostic tool, second only to pathology. While Dr. Meyer noted mild centrilobular emphysema consistent with Petitioner's smoking history, he found no micronodularity or parenchymal changes that would indicate pneumoconiosis. Notably, even Dr. Istambouly acknowledged that CT scans are more accurate than x-rays alone, further reinforcing the reliability of Dr. Meyer's findings.

Dr. David Rosenberg, a board-certified pulmonologist and B-reader, also reviewed Petitioner's medical records and imaging studies. He interpreted the April 7, 2023, chest x-ray as negative for pneumoconiosis, giving a profusion rating of 0/0. He testified that he conducted his

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B-reading using the ILO classification system and performed a side-by-side comparison with standard ILO films. Dr. Rosenberg reviewed the August 8, 2023, chest CT scan and similarly found no radiographic evidence of coal workers' pneumoconiosis. He noted mild emphysematous changes, which he attributed to Petitioner's extensive smoking history.

Dr. Meyer testified to his credentials and expertise in interpretation of chest x-rays. Dr. Meyer is not only a certified B-reader, he also served on 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 to be used for certification as a B-reader. There is no evidence to counter Dr. Meyer's expertise. There is no testimony of Dr. Smith in the record. Dr. Smith's CV indicates he failed two out of eight of his recertification exams as a NIOSH Certified B-reader. Based on the evidence in this record, the Arbitrator finds Drs. Meyer and Rosenberg to be the most credible B-readers in this case. See *Stewart v. The American Coal Company*, 21 IWCC 0337, *Brotherton v. Coal Field Construction*, 23 IWCC 0282 and *Hudgens v. The American Coal Company* 23 IWCC 0528.

The Arbitrator finds the opinions of Drs. Meyer and Rosenberg to be more credible and persuasive than the opinion of Dr. Istambouly. Dr. Meyer and Dr. Rosenberg are both B-readers and both personally reviewed not only the April 7, 2023 chest x-ray but also the August 8, 2023 CT of the chest. In contrast, Dr. Istambouly's diagnosis of pneumoconiosis was largely based on Dr. Smith's report and not on his own review of any chest imaging.

Petitioner's medical history and pulmonary function testing do not support a diagnosis of coal workers' pneumoconiosis, or any other occupational lung disease causally related to his employment. Treatment records reveal that Petitioner's pulmonary function testing has consistently been within normal limits, with no significant obstructive or restrictive ventilatory impairment. Pulmonary function testing performed on December 6, 2023, at Stat-Care showed normal spirometry and normal diffusion capacity, indicating no impairment in gas exchange or damage to the alveolar capillary bed. Dr. Rosenberg testified that these results are inconsistent with a diagnosis of coal workers' pneumoconiosis or any other occupational lung disease.

Both Dr. Rosenberg and Dr. Istambouly acknowledged that exertional shortness of breath can result from causes unrelated to respiratory diseases. Dr. Rosenberg testified that Petitioner's mild centrilobular emphysema is more likely linked to his 36-year smoking history rather than coal mine dust exposure. He emphasized that Petitioner's pulmonary function tests show, at most, minimal airflow obstruction, with spirometric values remaining above the lower limits of normal. Moreover, Dr. Rosenberg identified Petitioner's history of congestive heart failure and cardiomyopathy as more probable causes of his exertional shortness of breath. This is in accord with the treatment records. Dr. Istambouly did not dispute this, further agreeing that non-respiratory conditions can contribute to such symptoms. This evidence strongly supports the conclusion that Petitioner's shortness of breath is not attributable to coal dust exposure.

The Arbitrator notes the testimony of Dr. Istambouly that a negative x-ray can never rule out the existence of coal workers' pneumoconiosis pathologically. The Arbitrator finds that such testimony is not the same as saying that Petitioner in fact suffers from the disease. *Woolard v. The American Coal Company*, 21 IWCC 0154, p.17. It is not Respondent's duty to produce evidence that Petitioner did not have coal workers' pneumoconiosis. Rather the issue is whether Petitioner has proven that he does. *Quinn v. The American Coal Company*, 20 IWCC 0326.

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The Arbitrator finds that Petitioner failed to prove that he suffered coal workers' pneumoconiosis, COPD or any other occupational disease causally related to his exposure while working for Respondent.

Issue (o): whether Petitioner proved timely disablement pursuant to Sections 1(e) and (f) of the Occupational Diseases Act

Sections 1(e) and (f) of the Occupational Diseases Act. Section 1(e) of the Occupational Diseases Act states as follows:

“Disablement” means an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body, or the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he or she claims compensation, or equal wages in other suitable employment; and “disability” means the state of being so incapacitated. 820 ILCS 310/1(e).

Section 1(f) of the Act provides that said disablement must be present within two years after the last date of exposure to the hazards of an occupational disease. 820 ILCS 310/1(f). Petitioner failed to prove either an impairment or partial impairment or the event of becoming disabled from earning full wages as a coal miner or in other suitable employment.

The Arbitrator concludes 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.

In support of this conclusion, the Arbitrator notes the following:

In regard to inability to earn full wages as a coal miner, Petitioner's employment at Viper Mine ended due to downsizing approximately four years prior to arbitration. He testified that he was laid off unexpectedly during a shift meeting. Petitioner did not testify that his departure was related to any respiratory disease, impairment or inability to perform his job duties. Since leaving the mine, Petitioner has been employed full-time as a mechanic technician at a farm implement dealer, where he performs mechanic work, sets up equipment, and delivers machinery. Petitioner's continued employment in this physically demanding position indicates that he is capable of heavy manual labor and has not experienced disablement as defined by the Act. Further, Petitioner did not provide evidence showing a diminution in his earning capacity.

Petitioner testified that he began experiencing breathing difficulties approximately 12 years ago and currently uses medication and a bipap machine. However, there is no medical evidence indicating that any physician has ever restricted Petitioner from working due to a respiratory condition. Additionally, Petitioner's continued engagement in physically demanding activities such as hunting, splitting wood, fishing, and riding motorcycles suggests that he is not functionally impaired from performing heavy manual labor. Dr. Rosenberg testified that Petitioner remains capable of performing heavy manual labor from a respiratory standpoint. Similarly, Dr. Istambouly acknowledged that Petitioner is still able to carry out the duties required of his current position as a mechanic technician.

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In regard to functional impairment, the *AMA Guides to the Evaluation of Permanent Impairment*, Sixth Edition, Chapter 5, Table 5-4, does not use chest imaging as a factor let alone a key factor in the determination of pulmonary impairment. The diagnosis of an occupational disease does not equate to a finding of disablement. *Hicks v. Industrial Commission*, 251 Ill. App. 3d 320 (5th Dist. 1993); *Meracle v. The American Coal Company*, 24 IWCC 0616. Dr. Rosenberg testified that applying the results of the most recent pulmonary function testing performed on the Petitioner to Table 5-4 would place the Petitioner in Class 0 impairment. According to Section 5.5 of the *Guides*, objective testing serves as the key factor in determining an impairment rating. In contrast, history and physical examination are considered subjective and are not used to determine the impairment class. Instead, they function as non-key factors to refine the impairment rating after the impairment class is established through objective testing.

Given the Arbitrator's findings on disease, causation, and disablement, the Arbitrator makes no findings as to nature and extent.

Petitioner's claim for benefits is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC017064
Case Name	Zachary Schrader v. Prairie State Generating Company
Consolidated Cases	24WC017081
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0446
Number of Pages of Decision	20
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Michael Karr

DATE FILED: 11/10/2025

/s/ Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)

) SS.

COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Zachary Schrader,

Petitioner,

vs.

NO: 24 WC 17064

Prairie State Generating Company,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective 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 March 7, 2025, 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 \$42,600.00. 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.

November 10, 2025

O: 11/5/25

CMD/kcb

045

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

/s/ Frank J. Soto

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC017064
Case Name	Zachary Schrader v. Prairie State Generating Company
Consolidated Cases	24WC017081
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	Michael Karr

DATE FILED: 3/7/2025

/s/ Bradley Gillespie, Arbitrator

Signature**INTEREST RATE WEEK OF MARCH 4 2025 4.14%**

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)

Zachary Schrader
 Employee/Petitioner

Case # **24** WC **17064**

v. Consolidated cases:

Prairie State Generating Company
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Collinsville, Illinois**, on **February 5, 2025**. 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 10, 2024**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* 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 **\$95,291.24**; the average weekly wage was **\$1,832.52**.

On the date of accident, Petitioner was **39** years of age, *married* with **3** dependent children.

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1,221.68/week for 20 1/7 weeks, commencing September 17, 2024 through February 5, 2025, as provided in Section 8(b) of the Act.

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

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

Respondent shall authorize and pay for the prospective treatment recommended by Dr. Gornet, including, but not limited to, cervical spine surgery.

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

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 **MARCH 7 2025**

Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZACHARY SCHRADER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Nos: 24WC017064
	)	24WC017081
PRAIRIE STATE GENERATING	)	
COMPANY,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

PROCEDURAL POSTURE

This matter came before an Arbitrator appointed by the Commission pursuant to Petitioner's 19(b) Petition.

Petitioner filed two Applications for Adjustment of Claim, the first bearing case number 24WC17064, wherein Petitioner alleges that he sustained accidental injuries to his left eye, face, head, neck, and body as a whole on June 10, 2024, when he was hit by a cable reel ball. (Arb. Ex. 2) Disputed issues with respect to this case were causal connection, medical bills, liability for temporary total disability benefits from September 17, 2024, to February 5, 2025, and prospective medical treatment. (Tr. pp. 4-6)

Petitioner's second Application for Adjustment of Claim bears case number 24WC17081, wherein Petitioner alleges accidental injuries to his bilateral wrists, hands, elbows, arms, shoulders, and neck as a result of repetitive duties, with a manifestation date of June 17, 2024. (Arb. Ex. 4) Disputed issues with respect to this case were accident, causal connection, medical bills, liability for temporary total disability benefits from September 17, 2024, to February 5, 2025, and prospective medical treatment. (Tr. pp. 8-9)

The facts outlined below pertain to both case numbers 24WC17064 and 24WC17081. The conclusions of law as outlined below pertain only to Petitioner's June 10, 2024, claim, which bears case number 24WC17064. A decision containing conclusions of law concerning Petitioner's companion case with the date of injury June 17, 2024, bearing case number 24WC17081, will be issued separately.

FINDINGS OF FACTMedical Evidence

On June 11, 2024, at 12:25 a.m., Petitioner presented to the emergency department at Sparta Community Hospital. (PX 3) It was noted that Petitioner had sustained a blow to the head that day at work with a power cable with a diameter of approximately 10 centimeters. (PX 3, p. 7) Petitioner experienced a loss of consciousness and was dazed with slowly worsening

lightheadedness. *Id.* He reported that an on-site nurse had attempted to close his facial laceration with Steri-Strips and glue without success. *Id.* On exam, he had tenderness and swelling to the left upper eyelid, a superficial 1 centimeter laceration with controlled bleeding, and small ecchymosis of the lateral aspect of the upper lid. (PX 3, p. 8) A CT of the brain was performed, which showed no acute intracranial abnormalities. (PX 3, pp. 8-9) The diagnoses were minor closed head injury, concussion, loss of consciousness for a few seconds, single laceration on the head, and no foreign body present. (PX 3, p. 10) Petitioner's wound was cleaned and closed with three sutures. (PX 3, p. 9) Signs and symptoms of intracranial hemorrhage were discussed with Petitioner, and he was discharged home with instructions to follow up with his primary care physician. (PX 3, p. 10)

On June 17, 2024, Petitioner presented to the office of Dr. Matthew Bradley with symptoms of bilateral upper extremity pain, numbness and tingling and neck pain. (PX 4, p. 2) Dr. Bradley noted that Petitioner had worked as a roof bolter in the coal mines for approximately six years and that he had noticed increased numbness and tingling in the hands for one year. *Id.* Originally, his symptoms occurred in the morning, and he could shake them out; however, they had recently become more chronic, waking him at night and making it difficult for him to grasp objects. *Id.*

Petitioner reported that around the first of the year, he saw his primary care physician, who ordered an EMG and nerve conduction study. *Id.* He then saw Dr. Bell, who diagnosed him with bilateral carpal tunnel syndrome and placed him on steroids and night braces. (PX 4, p. 2) Petitioner reported that this helped his symptoms but his symptoms recurred when the steroids were stopped. *Id.* Petitioner did not engage in any hobbies with significant repetitive use of his hands or elbows. *Id.* Dr. Bradley noted that Petitioner worked as a coal miner and that he had completed a work history timeline and typed out his job requirements, which Dr. Bradley reviewed with him. *Id.*

On exam, Petitioner had positive Tinel's at the right and left elbows and tingling over the small finger on exam of the left elbow. (PX 4, pp. 2-3) On exam of the bilateral hands and wrists, he had numbness and tingling over the median nerve distribution, as well as positive Phalen's and Tinel's testing. *Id.* X-rays of the elbows and wrists showed no fractures or significant degenerative changes. (PX 4, p. 3) Dr. Bradley reviewed an EMG and nerve conduction study from Memorial Hospital dated December 26, 2023, which indicated mild right-worse-than-left carpal tunnel syndrome. (PX 4, p. 4)

Dr. Bradley's assessment was bilateral carpal tunnel and possibly mild cubital tunnel on the left. *Id.* He indicated that Petitioner had been treated non-operatively but had not responded. *Id.* His symptoms were chronic and causing him to drop objects. *Id.* Petitioner had to lift five to six pound roof bolts and glue them into place and was worried he would no longer be able to do so safely. *Id.* Operative intervention in the form of an open carpal tunnel release was discussed, and Petitioner wished to proceed. (PX 4, p. 4)

Dr. Bradley stated that it was his medical opinion that the 6-plus years Petitioner had worked as a coal miner and roof bolter had at least contributed to the development of his bilateral carpal tunnel and need for treatment. *Id.*

With respect to Petitioner's neck, Petitioner had a significant amount of neck pain that had been present for a while, and he reported that sometimes when he turned his head, there was a

click followed by pain from his neck to his fingertips. (PX 4, p. 4) Dr. Bradley explained to Petitioner that he was not a neck specialist, but he would be happy to refer him to a cervical spine specialist and gave him a referral to Dr. Matthew Gornet. *Id.* Dr. Bradley stated he would work with Petitioner to try to get him a visit with Dr. Gornet's office as soon as possible. *Id.*

On June 25, 2024, Petitioner presented to the office of Dr. Matthew Gornet, who indicated that this was Petitioner's first visit and that he had been referred by Dr. Bradley. (PX 5, p. 2) He noted that Petitioner had neck pain to the base of his neck, bilateral trapezial pain into his shoulders, and intermittent tingling down both arms, right-worse-than-left. *Id.* It was noted that on June 10, 2024, Petitioner was working as a coal miner and operating a roof bolt machine that had a reel for electrical wire, and that the machine malfunctioned, pulled the wire from the ceiling, and struck Petitioner hard on the left side of his face, causing a laceration. *Id.* Dr. Gornet noted that Dr. Bradley had ordered an MRI and referred him. *Id.*

Petitioner reported that he had a history of some neck pain and arm paresthesia, and that he had an MRI of his cervical spine in January. (PX 5, p. 2) He also had nerve function studies, which showed mild carpal tunnel. *Id.* Dr. Gornet noted that Petitioner had not missed any work and had been working full duty with no restrictions until the accident. *Id.* Petitioner felt that his current symptoms were different than they were previously, as his prior symptoms were milder and more intermittent, but his current symptoms were constant and made worse with reaching, pulling and lifting. *Id.*

On exam, Petitioner motioned to pain in his neck to both sides, bilateral trapezius, right-greater-than-left, as well as tingling in both arms and fingertips, the right being more pronounced than the left. (PX 5, p. 3) He had mild decreased range of motion when rotating to the right, and he had mild weakness in his bilateral biceps at 4+/5. *Id.* He had decreased sensation in the right hand fingertip distribution. *Id.*

Dr. Gornet reviewed Petitioner's pre-accident MRI from Cedar Court Imaging dated January 22, 2024. (PX 5, p. 3) He indicated that the image quality was relatively poor; however, it revealed bilobular herniation at C5-6 but no significant changes at C4-5 or the other levels. *Id.* He asked Petitioner to obtain a copy of the report. *Id.*

A cervical spine MRI was performed that same day at MRI Partners of Chesterfield, and same showed left lateral recess foraminal and separate right foraminal herniations at C5-6, resulting in severe left-greater-than-right foraminal stenosis, ventral cord flattening and mild central canal stenosis. (PX 6) At C4-5, there was a left paracentral annular tear/fissure and herniation, resulting in dural displacement with mild central canal stenosis. *Id.* There were central protrusions at C2-3 and C3-4 without definite central canal or foraminal stenosis. *Id.*

Dr. Gornet reviewed the MRI that day and indicated that there were significant disc herniations at C4-5 and C5-6. (PX 5, p. 3) He directly compared it to Petitioner's previous scan, and noted that the pathology at C5-6 had increased in size, and the pathology at C4-5 was a new finding of significance. *Id.* Dr. Gornet's working diagnosis was disc injury at C4-5 and C5-6 and an aggravation of a pre-existing disc problem at C5-6. *Id.* He believed Petitioner's symptoms were related to his June 10, 2024, work accident and explained to Petitioner how his accident could easily aggravate an underlying condition and cause disc injury. *Id.* He recommended that Petitioner be placed on light duty. (PX 5, pp. 3, 5) He dispensed Naprosyn and referred Petitioner to Dr.

Helen Blake for steroid injections at C5-6, which would also blanket C4-5. *Id.* He noted that Petitioner should follow up in six to eight weeks, and that if he had not improved, consideration could be given to disc replacement at C4-5 and C5-6. (PX 5, p. 4)

On July 23, 2024, Petitioner underwent an epidural steroid injection on the right at C5-6 with Dr. Helen Blake. (PX 7; PX 8)

On September 19, 2024, Petitioner returned to Dr. Gornet, who indicated that he was being seen for neck pain and bilateral trapezium pain into his shoulder with intermittent tingling in his arms. (PX 5, p. 6) Dr. Gornet continued to relate Petitioner's symptoms to his June 10, 2024, work injury. *Id.* He noted that Petitioner's exam still showed mild weakness in the right and left biceps at 4+/5. *Id.* Petitioner's steroid injection had provided substantial relief, but only for about two weeks. *Id.* Dr. Gornet noted that Petitioner wished to move forward with surgery and that his tentative plan was to perform a cervical displacement at C4-5 and C5-6. (PX 5, p. 6)

Petitioner brought an IME from Dr. Kitchens to his appointment and asked Dr. Gornet to go through it with him. *Id.* He indicated that Dr. Kitchens did not comment on the fact that Petitioner's nerve function studies only showed mild sensory disturbances at the wrist. *Id.* He pointed out that Dr. Kitchen's report was absent on whether or not the wire striking Petitioner's face exacerbated any underlying condition. *Id.*

Dr. Gornet noted that Dr. Kitchens reviewed the MRI reports; however, there was no indication that he reviewed the films. (PX 5, p. 6) He discussed that it was highly unusual for a physician to comment on future treatment or whether or not a patient had an ongoing medical problem without even viewing his imaging studies. *Id.*

Dr. Gornet stated that Petitioner had clear objective pathology that was consistent with his subjective complaints, and that his pathology at C4-5 was new and that C5-6 had increased in size. (PX 5, p. 6) He noted that while Petitioner had some previous complaints in his cervical spine that warranted imaging studies, there was no indication he ever had a problem of such significance. *Id.* He stated that Petitioner had been working full duty for three years until his accident, and it was only after his accident that he had to miss work. *Id.* He believed that Petitioner had a component of carpal tunnel; however, given his foraminal narrowing at C5-6, he felt that Petitioner's cervical spine should be addressed first and indicated that his office sought approval for treatment of same. (PX 5, p. 7)

Petitioner returned to Dr. Bradley on December 12, 2024, and reported that he wore braces at night; however, same did not help significantly. (PX 4, p. 7) Dr. Bradley noted that Dr. Gornet felt Petitioner had some cervical etiology. *Id.* He noted that the cervical injections had helped Petitioner's neck pain but did not help the numbness and tingling in his hands. *Id.* Petitioner reported that when he held his phone in either hand with his elbow hyperflexed, he developed numbness and tingling in his fourth and fifth digits. *Id.* He also had consistent numbness and tingling in his thumb, index and long fingers. (PX 4, p. 7)

Dr. Bradley's assessment was bilateral carpal and cubital tunnel syndrome with cervical etiology. (PX 4, p. 9) He discussed with Petitioner that his case was complex, and that he had cervical pathology but also had an EMG which showed mild carpal tunnel. *Id.* He indicated that his symptoms of carpal and cubital tunnel were more severe than what the EMG and nerve

conduction studies indicated and stated that it was possible Petitioner had a component of cervical and peripheral compression leading to the significant severity of his symptoms. *Id.*

In an attempt to delineate the amount of contribution from his carpal tunnel, an injection was performed that day to his right carpal tunnel. (PX 4, p. 9) Dr. Bradley indicated that Petitioner should follow up in four weeks and that if his symptoms improved then recurred, it would be a good indication that the carpal tunnel was a significant contributor to his symptoms. *Id.*

On January 6, 2025, Petitioner followed up with Dr. Bradley, which took place via a telehealth appointment due to the weather. (PX 4, p. 11) Petitioner noted that since the injection, his hand had not been going numb nearly as much. *Id.* He had some occasional intermittent numbness and tingling, but overall, it had significantly improved. *Id.* There was no change in his left upper extremity symptoms. *Id.* Petitioner continued to use braces, perform a home exercise program, and take anti-inflammatories. (PX 4, p. 11)

Dr. Bradley's assessment was bilateral carpal and cubital tunnel syndrome with possible cervical component. (PX 4, p. 12) He noted that the left upper extremity was unchanged and nowhere near as symptomatic as the right. *Id.* As Petitioner's symptoms had improved significantly following the injection, Dr. Bradley recommended continued nonoperative treatment with braces, anti-inflammatories, and home exercise. *Id.* He indicated Petitioner should follow up in four to six weeks. *Id.*

Section 12 Report and Deposition of Dr. Daniel Kitchens

At Respondent's request, Petitioner submitted to a Section 12 examination with Dr. Daniel Kitchens on August 5, 2024. (RX 1, Dep. Ex. B, p. 055) Dr. Kitchens noted that Petitioner began experiencing numbness in his hands a few years ago, which worsened at the end of the last year. *Id.* He noted that Petitioner also had neck pain at the end of last year and received chiropractic treatments that provided minimal relief. *Id.* He stated that Petitioner had undergone an EMG and nerve conduction test which revealed carpal tunnel, and that he had undergone an MRI at that time. *Id.*

Dr. Kitchens stated that Petitioner's attorney had set up an appointment with Dr. Gornet in April or May 2024, but that Petitioner did not see Dr. Gornet until June 25, 2024. (RX 1, Dep. Ex. B, p. 055) He noted that on June 11, Petitioner was struck in the face with a power cable. *Id.* His coworker thought he had a brief loss of consciousness, and he required three stitches for a left orbital laceration. *Id.*

Petitioner reported that following the accident, the numbness in his arms and hands continued, and his neck pain worsened. *Id.* Dr. Kitchens noted Petitioner's current symptoms of burning pain with pins and needles-type discomfort in his neck, occipital headaches, and numbness and tingling in both arms and hands. (RX 1, Dep. Ex. B, p. 055) He noted that Petitioner's pain was an 8/10, that his pain woke him up from sleep at night, that his pain was present almost all the time, and that he experienced weakness in his neck, arms and hands. (RX 1, Dep. Ex. B, p. 057)

He indicated that Petitioner worked for Prairie State Generating Company for three years as a roof bolter, and that he worked nine hour shifts using an upside down drill press to drill holes into the top of the mine. (RX 1, Dep. Ex. B, p. 056) He noted that Petitioner moves levers on the drill press but does not hold or support the drill press. *Id.* He noted that Petitioner puts glue and

two-to-three pound metal rods into the holes he drills to support the roof. *Id.* He noted that prior to working for Respondent, Petitioner performed the same job for Peabody. *Id.* Prior to this, Petitioner was a truck driver. (RX 1, Dep. Ex. B, p. 056) He noted that Petitioner was on light duty restrictions but had been unable to work since June 25. *Id.*

On exam, he noted that Petitioner had subjective decrease to pinprick in his fingertips. (RX 1, Dep. Ex. B, p. 058) Dr. Kitchens reviewed Petitioner's pre-accident medical records, including a January 17, 2024, record from Dr. Bell, which indicated Petitioner had numbness and tingling in his hands for the past few years. (RX 1, Dep. Ex. B, p. 059) Dr. Bell's assessment was bilateral carpal tunnel syndrome. *Id.* Dr. Kitchen's reviewed a cervical MRI record from January 22, 2024, that showed mild posterior bulging at C5-6 with joint spurring, resulting in mild encroachment upon the neuro-foramina bilaterally. *Id.* He reviewed a follow-up record from Dr. Bell dated February 28, 2024, which indicated that Petitioner had stable bilateral carpal tunnel. *Id.* He also reviewed Petitioner's June 25, 2024, note from Dr. Gornet and cervical MRI report from MRI Partners of Chesterfield. (RX 1, Dep. Ex. B, p. 059)

Dr. Kitchen's diagnoses were bilateral carpal tunnel syndrome and subjective neck pain. (RX 1, Dep. Ex. B, p. 060)

With respect to the carpal tunnel, he did not feel that the June 10, 2024, work accident or Petitioner's job duties caused, aggravated, or exacerbated this condition. (RX 1, Dep. Ex. B, p. 061) He opined that Petitioner was at MMI, that he had a 0% AMA impairment rating, and that he did not require further medical treatment for his carpal tunnel. He did not elaborate as to the basis for any of his opinions with respect to Petitioner's carpal tunnel. (RX 1, Dep. Ex. B, p. 062)

Regarding Petitioner's cervical spine, Dr. Kitchen's indicated that Petitioner had chronic neck pain in 2023 with chiropractic treatment and stated that he did not see a record with a time of onset of neck pain with respect to his June 10, 2024, work accident. (RX 1, Dep. Ex. B, p. 060) He stated that Petitioner's attorney had referred him to Dr. Gornet before the June 10, 2024, work accident. *Id.* He indicated that Petitioner was not in need of further medical treatment for his neck and because he did not have neurologic weakness, myopathy, or radiculopathy, he did not feel the Petitioner was prevented from working full duty. (RX 1, Dep. Ex. B, p. 061) He felt Petitioner was at MMI and that he had a 0% AMA impairment rating. *Id.*

Dr. Kitchens testified via deposition on November 13, 2024. (RX 1) On direct examination, he testified consistently with his report. *Id.* He testified that he performs to four IMEs per month, all at the request of the defense, and that he charges \$1,200 per IME and \$2,000 For the first hour and 15 minutes for depositions. (RX 1, p.17)

He testified that the job duties he listed on page two of his report are his understanding of the duties of a roof bolter via Petitioner's report. (RX 1, pp. 11-12) He did not feel Petitioner's carpal tunnel syndrome was caused by or related to the job duties that Petitioner related; however, as in his report, he did not elaborate as to the basis of his opinion concerning causation. (RX 1, p. 16)

With respect to Dr. Bell's records, he testified that Dr. Bell did not give a specific causation statement for carpal tunnel in his assessment; however, he admitted that the history of present illness in Dr. Bell's note stated that Petitioner had worked in the coal mines with a lot of heavy

equipment with overactivity, awkward flexing of the wrist, and using power tools with heavy vibration, leading to numbness and tingling in the hands. (RX 1, pp. 28-29)

He did not have any of Dr. Bradley's records and thought Dr. Bradley was a chiropractor. (RX 1, pp. 27-29) He was subsequently corrected. (RX 1, p. 29)

With respect to Dr. Kitchens' notation about how Petitioner came to treat with Dr. Gornet, he was asked by Petitioner's counsel, "I'm pretty confused about why I would send a patient to Dr. Gornet before a date of a traumatic accident. Do you have any explanation for that at all?" (RX 1, pp. 17-18) Dr. Kitchen's replied, "No, I was surprised by that as well." *Id.* He admitted that Dr. Gornet's initial record indicated that Petitioner was referred to Dr. Gornet by Dr. Bradley but that he did not note same in his IME report. (RX 1, p. 26)

Dr. Kitchens admitted there was no evidence of prior trauma to Petitioner's cervical spine. (RX 1, p. 18) When asked if Petitioner was treating for any neck conditions with Dr. Bradley prior to his June 10, 2024, accident, Dr. Kitchens replied that Petitioner had chiropractic treatments the year prior; however, he did not have any records associated with same. *Id.*

Dr. Kitchens did not have the records from Sparta Community Hospital and was unaware that Petitioner had been diagnosed with a concussion. (RX 1, p. 19) He was unaware of the Petitioner had a brain CT at the hospital and was unaware that Petitioner had dizziness and lightheadedness following the injury. (RX 1, pp. 24-25) When read a portion of the hospital records which indicated Petitioner was struck with a power cable that was 10 centimeters in diameter, Dr. Kitchens agreed that same was a large cable. (RX 1, pp. 20-21) However, when asked for his opinion as to whether Petitioner's strike in the head was enough to cause cervical disc injury, his answers were evasive and non-responsive. (RX 1, pp. 19, 21-22) Although he did not have the medical records and was unaware that Petitioner had a concussion, he was adamant that he that this new information did not change his opinion on Petitioner's cervical spine. (RX 1, p. 23)

He admitted that Petitioner reported headaches as a symptom, and when asked if headaches could be a manifestation of cervical spine abnormality, he indicated that it would depend on the quality, distribution, and characteristics of the headache. (RX 1, p. 25) When asked to explain the characteristics to which he was referring that would manifest as a cervical spine injury, he refused to answer. (RX 1, pp. 25-26)

Dr. Kitchens admitted that at the time of his IME, he only had the cervical MRI reports and that he did not review the actual films. (RX 1, pp. 26-27) He stated that he was not asked to write an addendum report. (RX 1, p. 27)

Deposition of Dr. Matthew Gornet

Dr. Gornet testified via deposition on October 28, 2024. (PX 9) He testified that he is a board-certified orthopedic surgeon whose practice is devoted to spine surgery. (PX 9, pp. 5-6) He sees 100 to 120 patients per week and performs five to 10 surgeries per week. (PX 9, p. 6) His office is involved in clinical research, he participates in numerous FDA clinical trials and has authored numerous publications. *Id.*

Regarding causation, Dr. Gornet felt that Petitioner's June 10, 2024, accident was the cause of Petitioner's visit with him, and he stated that an accident such as the one Petitioner described

could easily aggravate an underlying condition and cause disc injury, both of which he felt applied to Petitioner. (PX 9, p. 11).

Dr. Gornet testified that he reviewed the actual films from Petitioner's pre-accident MRI and his post-accident MRI and testified that in putting the MRIs side-by-side, the disc herniation at C5-6 was worse, and there was a new herniation at C4-5. (PX 9, pp. 9-10) He testified that the C4-5 herniation was also not mentioned in the Cedar Court radiologists' report. (PX 9, p. 10)

He testified that the scan from Cedar Court Imaging was relatively poor and did not contain foraminal views. (PX 9, pp. 25-26) Regarding this, he was asked if the herniation at C4-5 could have simply been missed on the previous scan, to which he replied:

It's possible they missed a component of a foraminal herniation. But where I'm describing there's a change is directly central in the midsagittal views. Those were done on both scans. And so there is a clear incremental difference, particularly at C4-5, I think it's irrefutable. And that's why the radiologist, Doug Folk (phonetic), or whatever, didn't even mention anything at C4-5. Now he clearly has additional pathology. And at least from my opinion in the straight sagittals, not looking at the foraminals, because there weren't foraminals on the past scan, in the new sagittals, C4-5 is completely new, C5-6 is increased. (PX 9, pp. 26-27)

He was asked if the C5-6 herniation could have increased on its own through the degenerative process, and he stated that in looking at the facts - the fact that Petitioner did not previously have upper extremity weakness, the fact that he had an MRI scan with increasing disc pathology, and the fact that he had an event that could easily cause additional disc injuries - there was no other plausible explanation to support any other cause for the increase other than the work accident. (PX 9, pp. 27-28)

He reviewed Dr. Kitchen's report and disagreed with Dr. Kitchen's opinion that Petitioner did not sustain injury and did not need treatment. (PX 9, p. 17) When asked the reason for his opinion regarding same, he stated:

Well, first, he has a known type of injury, being struck on the side of his face, that could easily cause a disc injury; that's number one. Number two is this situation is quite simple. He had an MRI before and an MRI after this injury, and his MRI after the injury is worse. So unless there's some other hypothetical reason of why he's here, and the only one we see by his verbal history is this cervical spine injury, which brought him to the emergency room with a laceration on his face, and that could be fairly traumatic, The only reason for worsening is this injury itself. So this is pretty straightforward as far as the source or cause of his current symptoms. (PX 9, pp. 17-18)

He agreed that Petitioner's EMG and nerve conduction study from December 26, 2023, showed mild carpal tunnel, but not cervical radiculopathy. (PX 9, p. 22) He testified that the weakness in Petitioner's biceps was an exam sign of cervical radiculopathy. (PX 9, pp. 24-25)

He testified that after Petitioner's injection wore off, he was still having pain, and there was no other conservative treatment that would have been beneficial and therefore, he recommended cervical displacements at C4-5 and C5-6. (PX 9, pp. 12-13) With respect to disc

replacement surgery, Dr. Gornet testified that Petitioner had objective pathology on his MRI scan and that his physical examination, which included paresthesias and bicep weakness, correlated with his MRI. (PX 9, pp. 13-14) He testified that perspective randomized clinical trials have shown that cervical disc replacement is superior to fusion in all categories. (PX 9, pp. 14-15) He indicated that if Petitioner underwent the surgery, his prognosis would be excellent, and he would expect Petitioner to return to work full duty. (PX 9, pp. 15-16) On the other hand, he testified that given Petitioner's motor weakness, failed conservative measures, and the anatomic findings on MRI, it would be highly unlikely he would heal without surgery enough to return to full duty. (PX 9, p. 30)

Documentary Evidence

Petitioner completed a work history timeline, which indicated he had worked for Respondent for two-and-a-half years as an underground coal miner. (PX 11) His job duties included roof bolting, running scoop, moving belts, out-by work, and move power. *Id.* Prior to working for Respondent, he worked for three years for Gateway Mine and had the same job title and duties. *Id.* Prior to Gateway Mine, he worked for Beelman Trucking for five years as a truck driver, and his job duties included loading, unloading, and cleaning out the trailer and driving a semi-truck. *Id.* Before Beelman Trucking, he worked for one year as a concrete finisher, where he poured concrete, performed finish work, and set up, took down forms, and cleaned forms. (PX 11) Prior to working as a concrete finisher, he worked for one year as a landscaper, where he mowed, set paver patios, built block retaining walls, and spread rock and mulch. *Id.* Prior to this, he worked for an excavating company as an operator for one-and-a-half years, where he operated heavy equipment, installed drain tiles, and made fitting connections. *Id.* Prior to his employment as an operator, he worked for an excavating and landscape company for three years as an operator and landscaper where he mowed, built block retaining walls, set paver patios, ran equipment, and laid sod, rock, and mulch. *Id.* Before his work for the landscaping and excavating company, he worked as an irrigation laborer for one year, where he installed irrigation systems, connected fittings, dug trenches, and laid sod. (PX 11) Prior to this time, he worked for two years as a landscaper, where he built block retaining walls, set paver patios, performed landscaping, and laid rock and mulch. *Id.*

Petitioner completed a detailed job description for an underground coal miner. (PX 10) He indicated that he performed lifting on and off for nine hours per day. *Id.* He lifted miner and bolter cables above his head, lifted 50 pound bags, lifted five and six foot bolts, chest height into the bolter tray, lifted blocks to build stopping walls, and lifted the battery on the scoop. *Id.*

He indicated that he performed pulling on the bolter and miner cable daily off and on for nine hours per day. *Id.* He performed bending and stooping off and on for nine hours per day, and in doing so, he bent to pick up miner and bolter cables, as well as bolts, plates, and glue to load into bolter pods. (PX 10) He also bent to pick up bags of dust and trash. *Id.*

He indicated that he performed loading and unloading on and off, for nine hours per day and that he loaded four-foot glue tubes, bolt plates, and five and six foot bolts into the bolter tray and bolter pods. *Id.* He loaded and unloaded bags of dust on the scoop and loaded and unloaded 5' x 16' screen wire onto the bolter. *Id.*

He indicated that he performed reaching above shoulder level daily, but for a minimum of six hours per day, and that he performed same when hanging miner and bolter cable above his head, putting glue and bolts into the drill hole, putting up curtain boards, putting 5' x 16' metal screen wire on ATRS to be lifted to the roof. (PX 10).

He indicated that he used his hands for gross manipulation for nine hours per day and that he did this by holding, grasping, and moving the bolter joystick to operate the bolter, holding bolts at arms-length while the drill pod came to the bolt, and rotating the bolt while grasping it to get it started correctly. *Id.* He pushed and pulled and grasped the lever to operate the bolter and grasped and twisted battery connections in order to change the battery. *Id.*

He used his hands for fine manipulation daily for nine hours per day while using his fingers to push and pull levers to adjust the drill pod. *Id.* He also performed hammering nails, and spads, pushing nails through the curtain above his head in order to hang, and stated that he performed same daily on and off for nine hours per day. (PX 10)

Petitioner's Testimony

Petitioner testified that he is employed with Respondent as a roof bolter and that his job description, which is Petitioner's Exhibit 10, and his work history timeline, which is Petitioner's Exhibit 11, are accurate descriptions of his duties for Respondent. (Tr. p. 15) He has worked for Respondent as a roof bolter for three years and testified that it is the hardest job in the mine because it is very manual-labor intensive, and there is a lot of overhead work. (Tr. pp. 15-16) He testified that he firmly grips and grasps bolts and machines all day and uses force to generate steel shafts up into the roof. *Id.* He testified that this involves repetition over his entire shift. (Tr. pp. 16-17)

He testified that during the course of his work for Respondent, he began to experience numbness in both arms and hands. (Tr. pp. 16-17) He testified that he is 39 years old, and does not suffer from gout, hypothyroidism, rheumatoid arthritis, diabetes, or obesity. (Tr. p. 17) Prior to working for Respondent, he did not have numbness and tingling in his arms and hands. *Id.*

He testified that when he went to see Dr. Bradley, he told him about the work he performed as a roof bolter. (Tr. p. 20)

He testified that on June 10, 2024, he was at work when he was struck in the face with a reel ball on a cable. (Tr. p. 18) He testified that the reel ball is on the cable and when it gets reeled into the machine, it stops it from going up anymore. *Id.* The ball weighed approximately 10 pounds and struck him on his face around the left eye. (Tr. pp. 18-19)

He testified that he immediately went to the emergency room following his June 10, 2024, accident, however, because he was on the second shift, he arrived at the emergency room on June 11, 2024. (Tr. p. 19) He testified that the emergency room took him off work for two days. (Tr. p. 20) He testified that he felt dizzy and lightheaded, and had pain in his neck, as well as continued pain in his arms and hands. *Id.* Petitioner testified that at the emergency room, his primary concern was a head injury and possible brain bleed. (Tr. pp. 32-33)

With respect to Dr. Kitchen's report, which indicated that the appointment with Dr. Gornet had already been set in April or May, Petitioner asked if this was his understanding, and he replied "No." (Tr. p. 31) He testified that he told Dr. Bradley he was having neck pains and that Dr.

Bradley referred him to Dr. Gornet, and that this occurred as stated in Dr. Bradley's note. (Tr. pp. 20-22, 24-25)

He testified that prior to his June 10 work injury, he had seen a chiropractor for his neck to help with pain, as well as for hand and arm numbness. (Tr. pp. 22, 27) He testified that his January 2024 MRI was ordered because he was having numbness in his hands and arms, but he was not having neck pain. (Tr. p. 28)

Regarding Dr. Bradley's notation that when Petitioner turned his head, there was a click, followed by pain from his neck into his fingertips, Petitioner was asked how long these symptoms had been present, and he testified they had been present since the work injury. (Tr. pp. 30-31)

Petitioner testified that the wrist injections performed by Dr. Bradley only helped temporarily. (Tr. p. 23) He testified that Dr. Gornet rather recommended surgery, and that is it is his hope to "to get fixed and be able to return to work." (Tr. pp. 23-24) He testified that he has continuous neck pain as well as numbness in his hands and arms. (Tr. pp. 25-26)

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).

The law holds that accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003). [Emphasis added]. Where a preexisting condition is present, Petitioner need only show that the prior condition was aggravated or the need for treatment accelerated. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 672-673 (2003); *Schroeder v. Illinois Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, 79 N.E.3d 833. Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 359 Ill. App. 3d 582, 834 N.E.2d 583 (2005). 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).

"Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 309 Ill. App. 3d 1037, 723 N.E.2d 846 (2000). The law is clear that if a preexisting condition is aggravated, exacerbated, or accelerated by an accidental injury, the employee is entitled to benefits. *Rock Road Constr. v. Indus. Comm'n*, 227 N.E.2d 65, 67-68 (Ill. 1967), 37 Ill. 2d 123; see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 66 Ill. 2d 234, 362 N.E.2d 339 (1977).

A compensable aggravation occurs when a claimant's need for surgery is accelerated. *Judith Wheaton v. State of Illinois/Choate Mental Health Center*, 13 I.W.C.C. 0467; *Bowman v. Gateway Reg'l Med. Ctr.*, 14 I.W.C.C. 1022; *Clutterbuck v. UPS*, 15 I.W.C.C. 0046; *Howard v. St. Clair Hwy. Dept.*, 16 I.W.C.C. 0187, modified 16 MR 106.

Respondent disputes causation with respect to Petitioner's cervical spine based on the opinion of its Independent Medical Examiner, Dr. Kitchens.

The Arbitrator has considered the opinions of both Dr. Kitchens and Petitioner's treating physician, Dr. Gornet, and finds the opinions of Dr. Gornet to be more informed, logical, and persuasive than those of Dr. Kitchens.

In so finding, the Arbitrator notes that Dr. Kitchen's did not have the initial treatment records from Sparta Hospital and was unaware that Petitioner had been diagnosed with a concussion or that he suffered dizziness and lightheadedness following the injury. (RX 1, pp. 19, 24-25) Despite lacking medical records and details regarding Petitioner's injury, Dr. Kitchens was adamant that he would not change his opinion on causation, and he was evasive when asked if Petitioner's mechanism of injury could cause cervical disc injury. (RX 1, pp. 19, 21-23)

Further, Dr. Kitchens stated that Petitioner told him that his appointment with Dr. Gornet was already scheduled in April or May, prior to his accident; however, there is no evidence that this was the case. (RX 1, Dep. Ex. B) In fact, Petitioner testified that this was not the case, and Dr. Bradley's June 17, 2024, note was clear that he was referring Petitioner to Dr. Gornet and would assist him in getting an appointment as soon as possible. (PX 4, p. 4; Tr. pp. 20-22, 24-25, 31) Although Dr. Kitchens did not have Dr. Bradley's note, he did review Dr. Gornet's note, which was also clear that Petitioner had been referred by Dr. Bradley. (PX 5, p. 2)

The Arbitrator cannot fully reconcile the drastic differences between the IME of Dr. Kitchens' and the accounts of Dr. Bradley, Dr. Gornet, and Petitioner concerning this issue. However, the Arbitrator notes with interest that despite lacking records from Dr. Bradley, Dr. Kitchens testified under the inaccurate assumption that Dr. Bradley was a chiropractor until he was corrected during his testimony. (RX 1, pp. 27, 29) Taking into account his incorrect belief that Dr. Bradley was a chiropractor, the Arbitrator notes that Dr. Kitchens stated in his report that Petitioner had chronic neck pain in 2023 and had chiropractic treatment. (RX 1, Dep. Ex. B) Because he knew that Dr. Gornet's note stated Petitioner was referred by Dr. Bradley, knew that Petitioner had chiropractic treatment in 2023, and erroneously believed that Dr. Bradley was the chiropractor in question, it is possible that due to his incorrect beliefs about the timeline of Dr. Bradley's treatment, Dr. Kitchens incorrectly assumed that there had been referrals prior to Petitioner's June 10, 2024, accident.

Moreover, the Arbitrator finds it puzzling that Dr. Kitchens claimed he did not see a record with a time of onset of neck pain with respect to Petitioner's June 10, 2024 work accident, since his report indicates that he had reviewed Dr. Gornet's initial note, dated just 15 days post-accident, which clearly stated Petitioner's symptoms had increased since his accident and that his current condition was related to his accident. (RX 1, Dep. Ex. B; PX 5, p. 2)

Further, without even reviewing Petitioner's cervical MRI films, Dr. Kitchens opined that Petitioner did not need further treatment. (RX 1, Dep. Ex. B) This raises serious doubts as to the

quality of his exam in and of itself; however, these doubts are further compounded by the fact that Dr. Kitchens *did* review the MRI reports, which by his own admission showed *severe* foraminal stenosis and ventral cord flattening. *Id.*

Additionally, despite noting that Petitioner's pain symptoms were severe at an 8 out of 10, that they were present all the time, and that same woke him at night, Dr. Kitchens' diagnosis was simply "subjective neck pain." (RX 1, Dep. Ex. B) Again, notwithstanding the overwhelming evidence that Petitioner had a severe injury, Dr. Kitchens recommended no treatment. *Id.* While the Arbitrator finds this opinion to be illogical on its own, it descends further into unreasonableness due to the fact that Dr. Kitchens did not even attempt to offer any explanation as to how he concluded that Petitioner did not require treatment, irrespective of causation.

Instead of offering his opinion on Petitioner's mechanism of injury, MRI findings, or increased symptoms, Dr. Kitchens instead focused on the fact that Petitioner had prior chiropractic treatment (for which he did not have any records, and which he erroneously believed was with Dr. Bradley) as well as his incorrect assumption that Petitioner was scheduled to see Dr. Gornet prior to his accident. (RX 1, Dep. Ex. B) Furthermore, his opinions were offered with little to no explanation or basis. In summary, Dr. Kitchens' report was vague, lacking in substance, and rooted in inaccurate beliefs.

In contrast, Dr. Gornet's opinions were reasonable and well-founded. While he acknowledged that Petitioner had prior cervical spine issues, Dr. Gornet pointed out that it was only after his June 10 accident that Petitioner had to miss work due to his symptoms. (PX 5, pp. 6-7)

Moreover, the evidence shows that cervical radiculopathy was not present on Petitioner's pre-accident December 2023 EMG and nerve conduction study, but Petitioner's biceps weakness, which Dr. Gornet testified was evidence of radiculopathy, was present following his accident. and this supports Dr. Gornet's opinion that Petitioner had a component of carpal tunnel, as well as Dr. Bradley's opinion that the symptoms in Petitioner's upper extremities were made more severe due to his cervical spine component. (PX 9, pp. 22, 24-25; PX 4, pp. 7-9; PX 5, pp. 6-7)

Further, unlike Dr. Kitchens, Dr. Gornet reviewed the actual films of both the pre and post-accident MRIs, and therefore, his opinion regarding the increase in Petitioner's pathology at C5-6 and new pathology at C4-5 is far more reliable than the opinion of Dr. Kitchens, who, other than summarizing the reports, was silent on the matter of Petitioner's MRI findings. (PX 9, pp. 9-10; PX 5, p. 2)

In further contrast with Dr. Kitchens, who did not offer an opinion with respect to Petitioner's mechanism of injury, Dr. Gornet recognized that having a traumatic injury that involved a strike to the face with enough force to cause a laceration and a brief period of unconsciousness could easily cause disc injury, and the Arbitrator agrees. (PX 9, pp. 17-18)

Therefore, pursuant to the above, the Arbitrator finds and concludes that Petitioner's current condition of ill-being with respect to his cervical spine is causally related to his June 10, 2024, accident.

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

Issue (K): Is Petitioner entitled to any prospective medical care?

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).

Thus far, Petitioner has only undergone conservative treatment in the form of an injection. (PX 7) The Arbitrator finds that this treatment was reasonable and necessary.

With respect to prospective treatment, the Arbitrator notes that Petitioner's injection has since worn off. (PX 9, pp. 12-13; Tr. p. 23) Dr. Gornet testified that given Petitioner's pathology shown on his MRI along with his motor weakness, it would be unlikely that he would heal or return to work full duty without surgery; however, if he underwent the surgery, his prognosis would be excellent. (PX 9, p. 15-16, 30). Petitioner is desirous to undergo surgery, as he experiences continuous pain in his neck as well as paresthesias. (Tr. pp. 25-26)

Therefore, pursuant to the above findings on causal connection, the Arbitrator finds that the treatment rendered to Petitioner thus far has been reasonable, necessary, and causally connected to his work injury of June 10, 2024, and that Petitioner is liable for payment of the medical expenses as outlined in Petitioner's Exhibit 1. Further, the Arbitrator finds that Petitioner is entitled to prospective medical treatment, including, but not limited to, cervical spine surgery as recommended by Dr. Gornet.

Issue (L): 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).

The record shows that Petitioner has been on restrictions per Dr. Gornet since June 25, 2024. (PX 5) Pursuant to the above findings on causal connection, the Arbitrator finds that Respondent is liable for the payment of temporary total disability benefits for a period of 20 1/7 weeks, commencing September 17, 2024, through February 5, 2025.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC017081
Case Name	Zachary Schrader v. Prairie State Generating Company
Consolidated Cases	24WC017064
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0447
Number of Pages of Decision	22
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Michael Karr

DATE FILED: 11/10/2025

/s/ Carolyn Doherty, Commissioner

Signature

24 WC 17081

Page 1

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 MADISON	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ Modify	☐ PTD/Fatal denied
			☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Zachary Schrader,

Petitioner,

vs.

NO: 24 WC 17081

Prairie State Generating Company,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 7, 2025, 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.

24 WC 17081

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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 \$42,600.00. 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.

November 10, 2025

O: 11/5/25

CMD/kcb

045

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

/s/ *Frank J. Soto*

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC017081
Case Name	Zachary Schrader v. Prairie State Generating Company
Consolidated Cases	24WC017064
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Michael Karr

DATE FILED: 3/7/2025

*/s/ Bradley Gillespie, Arbitrator*Signature**INTEREST RATE WEEK OF MARCH 4 2025 4.14%**

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)

Zachary Schrader
 Employee/Petitioner

Case # **24** WC **17081**

v. Consolidated cases:

Prairie State Generating Company
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Collinsville, Illinois**, on **February 5, 2025**. 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 17, 2024**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* 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 **\$95,291.24**; the average weekly wage was **\$1,832.52**.

On the date of accident, Petitioner was **39** years of age, *married* with **3** dependent children.

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

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

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

ORDER

See companion case of 24WC17064 for order regarding temporary total disability benefits.

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

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

Respondent shall authorize and pay for the prospective treatment recommended by Dr. Bradley, including, but not limited to, conservative treatment and/or surgery.

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

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

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

Bradley D. Gillespie

Signature of Arbitrator

MARCH 7 2025

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZACHARY SCHRADER,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Nos: 24WC017081
	)	24WC017064
PRAIRIE STATE GENERATING	)	
COMPANY,	)	
	)	
Respondent.	)	

19(b) DECISION OF ARBITRATOR

PROCEDURAL POSTURE

This matter came before an Arbitrator appointed by the Commission pursuant to Petitioner's 19(b) Petition.

Petitioner filed two Applications for Adjustment of Claim, the first bearing case number 24WC17064, wherein Petitioner alleges that he sustained accidental injuries to his left eye, face, head, neck, and body as a whole on June 10, 2024, when he was hit by a cable reel ball. (Arb. Ex. 2) Disputed issues with respect to this case were causal connection, medical bills, liability for temporary total disability benefits from September 17, 2024, to February 5, 2025, and prospective medical treatment. (Tr. pp. 4-6)

Petitioner's second Application for Adjustment of Claim bears case number 24WC17081, wherein Petitioner alleges accidental injuries to his bilateral wrists, hands, elbows, arms, shoulders, and neck as a result of repetitive duties, with a manifestation date of June 17, 2024. (Arb. Ex. 4) Disputed issues with respect to this case were accident, causal connection, medical bills, liability for temporary total disability benefits from September 17, 2024, to February 5, 2025, and prospective medical treatment. (Tr. pp. 8-9)

The facts outlined below pertain to both case numbers 24WC17064 and 24WC17081. The conclusions of law as outlined below pertain only to Petitioner's June 17, 2024, claim, which bears case number 24WC17081. A decision containing conclusions of law concerning Petitioner's companion case with the date of injury June 10, 2024, bearing case number 24WC17064, will be issued separately.

FINDINGS OF FACT**Medical Evidence**

On June 11, 2024, at 12:25 a.m., Petitioner presented to the emergency department at Sparta Community Hospital. (PX 3) It was noted that Petitioner had sustained a blow to the head that day at work with a power cable with a diameter of approximately 10 centimeters. (PX 3, p. 7) Petitioner experienced a loss of consciousness and was dazed with slowly worsening

lightheadedness. *Id.* He reported that an on-site nurse had attempted to close his facial laceration with Steri-Strips and glue without success. *Id.* On exam, he had tenderness and swelling to the left upper eyelid, a superficial 1 centimeter laceration with controlled bleeding, and small ecchymosis of the lateral aspect of the upper lid. (PX 3, p. 8) A CT of the brain was performed, which showed no acute intracranial abnormalities. (PX 3, pp. 8-9) The diagnoses were minor closed head injury, concussion, loss of consciousness for a few seconds, single laceration on the head, and no foreign body present. (PX 3, p. 10) Petitioner's wound was cleaned and closed with three sutures. (PX 3, p. 9) Signs and symptoms of intracranial hemorrhage were discussed with Petitioner, and he was discharged home with instructions to follow up with his primary care physician. (PX 3, p. 10)

On June 17, 2024, Petitioner presented to the office of Dr. Matthew Bradley with symptoms of bilateral upper extremity pain, numbness and tingling and neck pain. (PX 4, p. 2) Dr. Bradley noted that Petitioner had worked as a roof bolter in the coal mines for approximately six years and that he had noticed increased numbness and tingling in the hands for one year. *Id.* Originally, his symptoms occurred in the morning, and he could shake them out; however, they had recently become more chronic, waking him at night and making it difficult for him to grasp objects. *Id.*

Petitioner reported that around the first of the year, he saw his primary care physician, who ordered an EMG and nerve conduction study. *Id.* He then saw Dr. Bell, who diagnosed him with bilateral carpal tunnel syndrome and placed him on steroids and night braces. (PX 4, p. 2) Petitioner reported that this helped his symptoms, but his symptoms recurred when the steroids were stopped. *Id.* Petitioner did not engage in any hobbies with significant repetitive use of his hands or elbows. *Id.* Dr. Bradley noted that Petitioner worked as a coal miner and that he had completed a work history timeline and typed out his job requirements, which Dr. Bradley reviewed with him. *Id.*

On exam, Petitioner had positive Tinel's at the right and left elbows and tingling over the small finger on exam of the left elbow. (PX 4, pp. 2-3) On exam of the bilateral hands and wrists, he had numbness and tingling over the median nerve distribution, as well as positive Phalen's and Tinel's testing. *Id.* X-rays of the elbows and wrists showed no fractures or significant degenerative changes. (PX 4, p. 3) Dr. Bradley reviewed an EMG and nerve conduction study from Memorial Hospital dated December 26, 2023, which indicated mild right-worse-than-left carpal tunnel syndrome. (PX 4, p. 4)

Dr. Bradley's assessment was bilateral carpal tunnel and possibly mild cubital tunnel on the left. *Id.* He indicated that Petitioner had been treated non-operatively but had not responded. *Id.* His symptoms were chronic and causing him to drop objects. *Id.* Petitioner had to lift five to six pound roof bolts and glue them into place and was worried he would no longer be able to do so safely. *Id.* Operative intervention in the form of an open carpal tunnel release was discussed, and Petitioner wished to proceed. (PX 4, p. 4)

Dr. Bradley stated that it was his medical opinion that the 6-plus years Petitioner had worked as a coal miner and roof bolter had at least contributed to the development of his bilateral carpal tunnel and need for treatment. *Id.*

With respect to Petitioner's neck, Petitioner had a significant amount of neck pain that had been present for a while, and he reported that sometimes when he turned his head, there was a

click followed by pain from his neck to his fingertips. (PX 4, p. 4) Dr. Bradley explained to Petitioner that he was not a neck specialist, but he would be happy to refer him to a cervical spine specialist and gave him a referral to Dr. Matthew Gornet. *Id.* Dr. Bradley stated he would work with Petitioner to try to get him a visit with Dr. Gornet's office as soon as possible. *Id.*

On June 25, 2024, Petitioner presented to the office of Dr. Matthew Gornet, who indicated that this was Petitioner's first visit and that he had been referred by Dr. Bradley. (PX 5, p. 2) He noted that Petitioner had neck pain to the base of his neck, bilateral trapezial pain into his shoulders, and intermittent tingling down both arms, right-worse-than-left. *Id.* It was noted that on June 10, 2024, Petitioner was working as a coal miner and operating a roof bolt machine that had a reel for electrical wire, and that the machine malfunctioned, pulled the wire from the ceiling, and struck Petitioner hard on the left side of his face, causing a laceration. *Id.* Dr. Gornet noted that Dr. Bradley had ordered an MRI and referred him. *Id.*

Petitioner reported that he had a history of some neck pain and arm paresthesia, and that he had an MRI of his cervical spine in January. (PX 5, p. 2) He also had nerve function studies, which showed mild carpal tunnel. *Id.* Dr. Gornet noted that Petitioner had not missed any work and had been working full duty with no restrictions until the accident. *Id.* Petitioner felt that his current symptoms were different than they were previously, as his prior symptoms were milder and more intermittent, but his current symptoms were constant and made worse with reaching, pulling, and lifting. *Id.*

On exam, Petitioner motioned to pain in his neck to both sides, bilateral trapezius, right-greater-than-left, as well as tingling in both arms and fingertips, the right being more pronounced than the left. (PX 5, p. 3) He had mild decreased range of motion when rotating to the right, and he had mild weakness in his bilateral biceps at 4+/5. *Id.* He had decreased sensation in the right hand fingertip distribution. *Id.*

Dr. Gornet reviewed Petitioner's pre-accident MRI from Cedar Court Imaging dated January 22, 2024. (PX 5, p. 3) He indicated that the image quality was relatively poor; however, it revealed bilobular herniation at C5-6 but no significant changes at C4-5 or the other levels. *Id.* He asked Petitioner to obtain a copy of the report. *Id.*

A cervical spine MRI was performed that same day at MRI Partners of Chesterfield, and same showed left lateral recess foraminal and separate right foraminal herniations at C5-6, resulting in severe left-greater-than-right foraminal stenosis, ventral cord flattening and mild central canal stenosis. (PX 6) At C4-5, there was a left paracentral annular tear/fissure and herniation, resulting in dural displacement with mild central canal stenosis. *Id.* There were central protrusions at C2-3 and C3-4 without definite central canal or foraminal stenosis. *Id.*

Dr. Gornet reviewed the MRI that day and indicated that there were significant disc herniations at C4-5 and C5-6. (PX 5, p. 3) He directly compared it to Petitioner's previous scan and noted that the pathology at C5-6 had increased in size, and the pathology at C4-5 was a new finding of significance. *Id.* Dr. Gornet's working diagnosis was disc injury at C4-5 and C5-6 and an aggravation of a pre-existing disc problem at C5-6. *Id.* He believed Petitioner's symptoms were related to his June 10, 2024, work accident and explained to Petitioner how his accident could easily aggravate an underlying condition and cause disc injury. *Id.* He recommended that Petitioner be placed on light duty. (PX 5, pp. 3, 5) He dispensed Naprosyn and referred Petitioner to Dr.

Helen Blake for steroid injections at C5-6, which would also blanket C4-5. *Id.* He noted that Petitioner should follow up in six to eight weeks, and that if he had not improved, consideration could be given to disc replacement at C4-5 and C5-6. (PX 5, p. 4)

On July 23, 2024, Petitioner underwent an epidural steroid injection on the right at C5-6 with Dr. Helen Blake. (PX 7; PX 8)

On September 19, 2024, Petitioner returned to Dr. Gornet, who indicated that he was being seen for neck pain and bilateral trapezium pain into his shoulder with intermittent tingling in his arms. (PX 5, p. 6) Dr. Gornet continued to relate Petitioner's symptoms to his June 10, 2024 work injury. *Id.* He noted that Petitioner's exam still showed mild weakness in the right and left biceps at 4+/5. *Id.* Petitioner's steroid injection had provided substantial relief, but only for about two weeks. *Id.* Dr. Gornet noted that Petitioner wished to move forward with surgery and that his tentative plan was to perform a cervical displacement at C4-5 and C5-6. (PX 5, p. 6)

Petitioner brought an IME from Dr. Kitchens to his appointment and asked Dr. Gornet to go through it with him. *Id.* He indicated that Dr. Kitchens did not comment on the fact that Petitioner's nerve function studies only showed mild sensory disturbances at the wrist. *Id.* He pointed out that Dr. Kitchen's report was absent on whether or not the wire striking Petitioner's face exacerbated any underlying condition. *Id.*

Dr. Gornet noted that Dr. Kitchens reviewed the MRI reports; however, there was no indication that he reviewed the films. (PX 5, p. 6) He discussed that it was highly unusual for a physician to comment on future treatment or whether or not a patient had an ongoing medical problem without even viewing his imaging studies. *Id.*

Dr. Gornet stated that Petitioner had clear objective pathology that was consistent with his subjective complaints, and that his pathology at C4-5 was new and that C5-6 had increased in size. (PX 5, p. 6) He noted that while Petitioner had some previous complaints in his cervical spine that warranted imaging studies, there was no indication he ever had a problem of such significance. *Id.* He stated that Petitioner had been working full duty for three years until his accident, and it was only after his accident that he had to miss work. *Id.* He believed that Petitioner had a component of carpal tunnel; however, given his foraminal narrowing at C5-6, he felt that Petitioner's cervical spine should be addressed first and indicated that his office sought approval for treatment of same. (PX 5, p. 7)

Petitioner returned to Dr. Bradley on December 12, 2024, and reported that he wore braces at night; however, same did not help significantly. (PX 4, p. 7) Dr. Bradley noted that Dr. Gornet felt Petitioner had some cervical etiology. *Id.* He noted that the cervical injections had helped Petitioner's neck pain but did not help the numbness and tingling in his hands. *Id.* Petitioner reported that when he held his phone in either hand with his elbow hyperflexed, he developed numbness and tingling in his fourth and fifth digits. *Id.* He also had consistent numbness and tingling in his thumb, index and long fingers. (PX 4, p. 7)

Dr. Bradley's assessment was bilateral carpal and cubital tunnel syndrome with cervical etiology. (PX 4, p. 9) He discussed with Petitioner that his case was complex, and that he had cervical pathology but also had an EMG which showed mild carpal tunnel. *Id.* He indicated that his symptoms of carpal and cubital tunnel were more severe than what the EMG and nerve

conduction studies indicated and stated that it was possible Petitioner had a component of cervical and peripheral compression leading to the significant severity of his symptoms. *Id.*

In an attempt to delineate the amount of contribution from his carpal tunnel, an injection was performed that day to his right carpal tunnel. (PX 4, p. 9) Dr. Bradley indicated that Petitioner should follow up in four weeks and that if his symptoms improved then recurred, it would be a good indication that the carpal tunnel was a significant contributor to his symptoms. *Id.*

On January 6, 2025, Petitioner followed up with Dr. Bradley, which took place via a telehealth appointment due to the weather. (PX 4, p. 11) Petitioner noted that since the injection, his hand had not been going numb nearly as much. *Id.* He had some occasional intermittent numbness and tingling, but overall, it had significantly improved. *Id.* There was no change in his left upper extremity symptoms. *Id.* Petitioner continued to use braces, perform a home exercise program, and take anti-inflammatories. (PX 4, p. 11)

Dr. Bradley's assessment was bilateral carpal and cubital tunnel syndrome with possible cervical component. (PX 4, p. 12) He noted that the left upper extremity was unchanged and nowhere near as symptomatic as the right. *Id.* As Petitioner's symptoms had improved significantly following the injection, Dr. Bradley recommended continued nonoperative treatment with braces, anti-inflammatories, and home exercise. *Id.* He indicated Petitioner should follow up in four to six weeks. *Id.*

Section 12 Report and Deposition of Dr. Daniel Kitchens

At Respondent's request, Petitioner submitted to a Section 12 examination with Dr. Daniel Kitchens on August 5, 2024. (RX 1, Dep. Ex. B, p. 055) Dr. Kitchens noted that Petitioner began experiencing numbness in his hands a few years ago, which worsened at the end of the last year. *Id.* He noted that Petitioner also had neck pain at the end of last year and received chiropractic treatments that provided minimal relief. *Id.* He stated that Petitioner had undergone an EMG and nerve conduction test which revealed carpal tunnel, and that he had undergone an MRI at that time. *Id.*

Dr. Kitchens stated that Petitioner's attorney had set up an appointment with Dr. Gornet in April or May 2024, but that Petitioner did not see Dr. Gornet until June 25, 2024. (RX 1, Dep. Ex. B, p. 055) He noted that on June 11, Petitioner was struck in the face with a power cable. *Id.* His coworker thought he had a brief loss of consciousness, and he required three stitches for a left orbital laceration. *Id.*

Petitioner reported that following the accident, the numbness in his arms and hands continued, and his neck pain worsened. *Id.* Dr. Kitchens noted Petitioner's current symptoms of burning pain with pins and needles-type discomfort in his neck, occipital headaches, and numbness and tingling in both arms and hands. (RX 1, Dep. Ex. B, p. 055) He noted that Petitioner's pain was an 8/10, that his pain woke him up from sleep at night, that his pain was present almost all the time, and that he experienced weakness in his neck, arms and hands. (RX 1, Dep. Ex. B, p. 057)

He indicated that Petitioner worked for Prairie State Generating Company for three years as a roof bolter, and that he worked nine hour shifts using an upside down drill press to drill holes into the top of the mine. (RX 1, Dep. Ex. B, p. 056) He noted that Petitioner moves levers on the drill press but does not hold or support the drill press. *Id.* He noted that Petitioner puts glue and

two-to-three pound metal rods into the holes he drills to support the roof. *Id.* He noted that prior to working for Respondent, Petitioner performed the same job for Peabody. *Id.* Prior to this, Petitioner was a truck driver. (RX 1, Dep. Ex. B, p. 056) He noted that Petitioner was on light duty restrictions but had been unable to work since June 25. *Id.*

On exam, he noted that Petitioner had subjective decrease to pinprick in his fingertips. (RX 1, Dep. Ex. B, p. 058) Dr. Kitchens reviewed Petitioner's pre-accident medical records, including a January 17, 2024, record from Dr. Bell, which indicated Petitioner had numbness and tingling in his hands for the past few years. (RX 1, Dep. Ex. B, p. 059) Dr. Bell's assessment was bilateral carpal tunnel syndrome. *Id.* Dr. Kitchen's reviewed a cervical MRI record from January 22, 2024, that showed mild posterior bulging at C5-6 with joint spurring, resulting in mild encroachment upon the neuro-foramina bilaterally. *Id.* He reviewed a follow-up record from Dr. Bell dated February 28, 2024, which indicated that Petitioner had stable bilateral carpal tunnel. *Id.* He also reviewed Petitioner's June 25, 2024, note from Dr. Gornet and cervical MRI report from MRI Partners of Chesterfield. (RX 1, Dep. Ex. B, p. 059)

Dr. Kitchen's diagnoses were bilateral carpal tunnel syndrome and subjective neck pain. (RX 1, Dep. Ex. B, p. 060)

With respect to the carpal tunnel, he did not feel that the June 10, 2024, work accident or Petitioner's job duties caused, aggravated, or exacerbated this condition. (RX 1, Dep. Ex. B, p. 061) Further, he opined that Petitioner was at MMI, that he had a 0% AMA impairment rating, and that he did not require further medical treatment for his carpal tunnel. He did not elaborate as to the basis for any of his opinions with respect to Petitioner's carpal tunnel. (RX 1, Dep. Ex. B, p. 062)

Regarding Petitioner's cervical spine, Dr. Kitchen's indicated that Petitioner had chronic neck pain in 2023 with chiropractic treatment and stated that he did not see a record with a time of onset of neck pain with respect to his June 10, 2024, work accident. (RX 1, Dep. Ex. B, p. 060) He stated that Petitioner's attorney had referred him to Dr. Gornet before the June 10, 2024 work accident. *Id.* He indicated that Petitioner was not in need of further medical treatment for his neck and because he did not have neurologic weakness, myopathy or radiculopathy, he did not feel the Petitioner was prevented from working full duty. (RX 1, Dep. Ex. B, p. 061) He felt Petitioner was at MMI and that he had a 0% AMA impairment rating. *Id.*

Dr. Kitchens testified via deposition on November 13, 2024. (RX 1) On direct examination, he testified consistently with his report. *Id.* He testified that he performs to four IMEs per month, all at the request of the defense, and that he charges \$1,200 per IME and \$2,000 For the first hour and 15 minutes for depositions. (RX 1, p. 17)

He testified that the job duties he listed on page two of his report are his understanding of the duties of a roof bolter via Petitioner's report. (RX 1, pp. 11-12) He did not feel Petitioner's carpal tunnel syndrome was caused by or related to the job duties that Petitioner related; however, as in his report, he did not elaborate as to the basis of his opinion concerning causation. (RX 1, p. 16)

With respect to Dr. Bell's records, he testified that Dr. Bell did not give a specific causation statement for carpal tunnel in his assessment; however, he admitted that the history of present

illness in Dr. Bell's note stated that Petitioner had worked in the coal mines with a lot of heavy equipment with overactivity, awkward flexing of the wrist, and using power tools with heavy vibration, leading to numbness and tingling in the hands. (RX 1, pp. 28-29)

He did not have any of Dr. Bradley's records and thought Dr. Bradley was a chiropractor. (RX 1, pp. 27, 29) He was subsequently corrected. (RX 1, p. 29)

With respect to Dr. Kitchens' notation about how Petitioner came to treat with Dr. Gornet, he was asked by Petitioner's counsel, "I'm pretty confused about why I would send a patient to Dr. Gornet before a date of a traumatic accident. Do you have any explanation for that at all?" (RX 1, pp. 17-18) Dr. Kitchen's replied, "No, I was surprised by that as well." *Id.* He admitted that Dr. Gornet's initial record indicated that Petitioner was referred to Dr. Gornet by Dr. Bradley but that he did not note same in his IME report. (RX 1, p. 26)

Dr. Kitchens admitted there was no evidence of prior trauma to Petitioner's cervical spine. (RX 1, p. 18) When asked if Petitioner was treating for any neck conditions with Dr. Bradley prior to his June 10, 2024, accident, Dr. Kitchens replied that Petitioner had chiropractic treatments the year prior; however, he did not have any records associated with same. *Id.* at 18.

He did not have the records from Sparta Community Hospital and was unaware that Petitioner had been diagnosed with a concussion. (RX 1, p. 19) He was unaware of the Petitioner had a brain CT at the hospital and was unaware that Petitioner had dizziness and lightheadedness following the injury. (RX 1, pp. 24-25) When read a portion of the hospital records which indicated Petitioner was struck with a power cable that was 10 centimeters in diameter, Dr. Kitchens agreed that same was a large cable. (RX 1, pp. 20-21) However, when asked for his opinion as to whether Petitioner's strike in the head was enough to cause cervical disc injury, his answers were evasive and non-responsive. (RX 1, pp. 19, 21-22) Although he did not have the medical records and was unaware that Petitioner had a concussion, he was adamant that he that this new information did not change his opinion on Petitioner's cervical spine. (RX 1, p. 23)

He admitted that Petitioner reported headaches as a symptom, and when asked if headaches could be a manifestation of cervical spine abnormality, he indicated that it would depend on the quality, distribution, and characteristics of the headache. (RX 1, p. 25) When asked to explain the characteristics to which he was referring that would manifest as a cervical spine injury, he refused to answer. (RX 1, pp. 25-26)

Dr. Kitchens admitted that at the time of his IME, he only had the cervical MRI reports and that he did not review the actual films. (RX 1, pp. 26-27) He stated that he was not asked to write an addendum report. (RX 1, p. 27)

Deposition of Dr. Matthew Gornet

Dr. Gornet testified via deposition on October 28, 2024. (PX 9) He testified that he is a board-certified orthopedic surgeon whose practice is devoted to spine surgery. (PX 9, pp. 5-6) He sees 100 to 120 patients per week and performs five to 10 surgeries per week. (PX 9, p. 6) His office is involved in clinical research, he participates in numerous FDA clinical trials and has authored numerous publications. *Id.*

Regarding causation, Dr. Gornet felt that Petitioner's June 10, 2024, accident was the cause of Petitioner's visit with him, and he stated that an accident such as the one Petitioner described could easily aggravate an underlying condition and cause disc injury, both of which he felt applied to Petitioner. (PX 9, p. 11)

Dr. Gornet testified that he reviewed the actual films from Petitioner's pre-accident MRI and his post-accident MRI and testified that in putting the MRIs side-by-side, the disc herniation at C5-6 was worse, and there was a new herniation at C4-5. (PX 9, 9-10) He testified that the C4-5 herniation was also not mentioned in the Cedar Court radiologists' report. (PX 9, p. 10)

He testified that the scan from Cedar Court Imaging was relatively poor and did not contain foraminal views. (PX 9, pp. 25-26) Regarding this, he was asked if the herniation at C4-5 could have simply been missed on the previous scan, to which he replied:

It's possible they missed a component of a foraminal herniation. But where I'm describing there's a change is directly central in the midsagittal views. Those were done on both scans. And so there is a clear incremental difference, particularly at C4-5, I think it's irrefutable. And that's why the radiologist, Doug Folk (phonetic), or whatever, didn't even mention anything at C4-5. Now he clearly has additional pathology. And at least from my opinion in the straight sagittals, not looking at the foraminals, because there weren't foraminals on the past scan, in the new sagittals, C4-5 is completely new, C5-6 is increased. (PX 9, pp. 26-27)

He was asked if the C5-6 herniation could have increased on its own through the degenerative process, and he stated that in looking at the facts - the fact that Petitioner did not previously have upper extremity weakness, the fact that he had an MRI scan with increasing disc pathology, and the fact that he had an event that could easily cause additional disc injuries - there was no other plausible explanation to support any other cause for the increase other than the work accident. (PX 9, pp. 27-28)

He reviewed Dr. Kitchen's report and disagreed with Dr. Kitchen's opinion that Petitioner did not sustain injury and did not need treatment. (PX 9, p. 17) When asked the reason for his opinion regarding same, he stated:

Well, first, he has a known type of injury, being struck on the side of his face, that could easily cause a disc injury; that's number one. Number two is this situation is quite simple. He had an MRI before and an MRI after this injury, and his MRI after the injury is worse. So unless there's some other hypothetical reason of why he's here, and the only one we see by his verbal history is this cervical spine injury, which brought him to the emergency room with a laceration on his face, and that could be fairly traumatic, The only reason for worsening is this injury itself. So this is pretty straightforward as far as the source or cause of his current symptoms. (PX 9, pp. 17-18)

He agreed that Petitioner's EMG and nerve conduction study from December 26, 2023, showed mild carpal tunnel, but not cervical radiculopathy. (PX 9, p. 22) He testified that the weakness in Petitioner's biceps was an exam sign of cervical radiculopathy. (PX 9, pp. 24-25)

He testified that after Petitioner's injection wore off, he was still having pain, and there was no other conservative treatment that would have been beneficial and therefore, he recommended cervical disc replacements at C4-5 and C5-6. (PX 9, pp. 12-13) With respect to disc replacement surgery, Dr. Gornet testified that Petitioner had objective pathology on his MRI scan and that his physical examination, which included paresthesias and bicep weakness, correlated with his MRI. (PX 9, pp. 13-14) He testified that perspective randomized clinical trials have shown that cervical disc replacement is superior to fusion in all categories. (PX 9, pp. 14-15) He indicated that if Petitioner underwent the surgery, his prognosis would be excellent, and he would expect Petitioner to return to work full duty. (PX 9, pp. 15-16) On the other hand, he testified that given Petitioner's motor weakness, failed conservative measures, and the anatomic findings on MRI, it would be highly unlikely he would heal without surgery enough to return to full duty. (PX 9, p. 30)

Documentary Evidence

Petitioner completed a work history timeline, which indicated he had worked for Respondent for two-and-a-half years as an underground coal miner. (PX 11) His job duties included roof bolting, running scoop, moving belts, out-by work, and move power. *Id.* Prior to working for Respondent, he worked for three years for Gateway Mine and had the same job title and duties. *Id.* Prior to Gateway Mine, he worked for Beelman Trucking for five years as a truck driver, and his job duties included loading, unloading, and cleaning out the trailer and driving a semi-truck. *Id.* Before Beelman Trucking, he worked for one year as a concrete finisher, where he poured concrete, performed finish work, and set up, took down forms, and cleaned forms. (PX 11) Prior to working as a concrete finisher, he worked for one year as a landscaper, where he mowed, set paver patios, built block retaining walls, and spread rock and mulch. *Id.* Prior to this, he worked for an excavating company as an operator for one-and-a-half years, where he operated heavy equipment, installed drain tiles, and made fitting connections. *Id.* Prior to his employment as an operator, he worked for an excavating and landscape company for three years as an operator and landscaper where he mowed, built block retaining walls, set paver patios, ran equipment, and laid sod, rock, and mulch. *Id.* Before his work for the landscaping and excavating company, he worked as an irrigation laborer for one year, where he installed irrigation systems, connected fittings, dug trenches, and laid sod. (PX 11) Prior to this time, he worked for two years as a landscaper, where he built block retaining walls, set paver patios, performed landscaping, and laid rock and mulch. *Id.*

Petitioner completed a detailed job description for an underground coal miner. (PX10) He indicated that he performed lifting on and off for nine hours per day. *Id.* He lifted miner and bolter cables above his head, lifted 50 pound bags, lifted five and six foot bolts, chest height into the bolter tray, lifted blocks to build stopping walls, and lifted the battery on the scoop. *Id.*

He indicated that he performed pulling on the bolter and miner cable daily, on for nine hours per day. *Id.* He performed bending and stooping off and on for nine hours per day, and in doing so, he bent to pick up miner and bolter cables, as well as bolts, plates, and glue to load into bolter pods. (PX 10) He also bent to pick up bags of dust and trash. *Id.*

He indicated that he performed loading and unloading on and off, for nine hours per day and that he loaded four-foot glue tubes, bolt plates, and five and six foot bolts into the bolter tray

and bolter pods. *Id.* He loaded and unloaded bags of dust on the scoop and loaded and unloaded 5' x 16' screen wire onto the bolter. *Id.*

He indicated that he performed reaching above shoulder level daily, but for a minimum of six hours per day, and that he performed same when hanging miner and bolter cable above his head, putting glue and bolts into the drill hole, putting up curtain boards, putting 5' x 16' metal screen wire on ATRS to be lifted to the roof. (PX 10)

He indicated that he used his hands for gross manipulation for nine hours per day and that he did this while holding, grasping, and moving the bolter joystick to operate the bolter, holding bolts at arms-length while the drill pod came to the bolt, and rotating the bolt while grasping it to get it started correctly. *Id.* He pushed and pulled and grasped the lever to operate the bolter and grasped and twisted battery connections in order to change the battery. *Id.*

He used his hands for fine manipulation daily for nine hours per day while using his fingers to push and pull levers to adjust the drill pod. *Id.* He also performed hammering nails, and spads, pushing nails through the curtain above his head in order to hang, and stated that he performed same daily on and off for nine hours per day. (PX 10)

Petitioner's Testimony

Petitioner testified that he is employed with Respondent as a roof bolter and that his job description, which is Petitioner's Exhibit 10, and his work history timeline, which is Petitioner's Exhibit 11, are accurate descriptions of his duties for Respondent. (Tr. p. 15) He has worked for Respondent as a roof bolter for three years and testified that it is the hardest job in the mine because it is very manual-labor intensive, and there is a lot of overhead work. (Tr. pp. 15-16) He testified that he firmly grips and grasps bolts and machines all day and uses force to generate steel shafts up into the roof. *Id.* He testified that this involves repetition over his entire shift. (Tr. pp. 16-17)

He testified that during the course of his work for Respondent, he began to experience numbness in both arms and hands. (Tr. pp. 16-17) He testified that he is 39 years old, and does not suffer from gout, hypothyroidism, rheumatoid arthritis, diabetes, or obesity. (Tr. p. 17) Prior to working for Respondent, he did not have numbness and tingling in his arms and hands. *Id.*

He testified that when he went to see Dr. Bradley, he told him about the work he performed as a roof bolter. (Tr. p. 20)

He testified that on June 10, 2024, he was at work when he was struck in the face with a reel ball on a cable. (Tr. p. 18) He testified that the reel ball is on the cable and when it gets reeled into the machine, it stops it from going up anymore. *Id.* The ball weighed approximately 10 pounds and struck him on his face around the left eye. (Tr. pp. 18-19)

He testified that he immediately went to the emergency room following his June 10, 2024 accident, however, because he was on the second shift, he arrived at the emergency room on June 11, 2024. (Tr. p. 19) He testified that the emergency room took him off work for two days. (Tr. p. 20) He testified that he felt dizzy and lightheaded, and had pain in his neck, as well as continued pain in his arms and hands. *Id.* Petitioner testified that at the emergency room, his primary concern was a head injury and possible brain bleed. (Tr. pp. 32-33)

With respect to Dr. Kitchen's report, which indicated that the appointment with Dr. Gornet had already been set in April or May, Petitioner asked if this was his understanding, and he replied "No." (Tr. p. 31) He testified that he told Dr. Bradley he was having neck pains and that Dr. Bradley referred him to Dr. Gornet, and that this occurred as stated in Dr. Bradley's note. (Tr. pp. 20-22, 24-25)

He testified that prior to his June 10 work injury, he had seen a chiropractor for his neck to help with pain, as well as for hand and arm numbness. (Tr. p. 22, 27) He testified that his January 2024 MRI was ordered because he was having numbness in his hands and arms, but he was not having neck pain. (Tr. p. 28)

Regarding Dr. Bradley's notation that when Petitioner turned his head, there was a click, followed by pain from his neck into his fingertips, Petitioner was asked how long these symptoms had been present, and he testified they had been present since the work injury. (Tr. pp. 30-31)

Petitioner testified that the wrist injections performed by Dr. Bradley only helped temporarily. (Tr. p. 23) He testified that Dr. Gornet rather recommended surgery, and that is it is his hope to "to get fixed and be able to return to work." (Tr. pp. 23-24) He testified that he has continuous neck pain as well as numbness in his hands and arms. (Tr. pp. 25-26)

CONCLUSIONS OF LAW

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

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

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated that the term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific force, flexion, and vibratory movements requisite in Petitioner's job. *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013). "[I]n no way can quantitative proof be held as the *sine qua non* of a repetitive trauma case." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015).

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines supra*.

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or “dosage” would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Darling*, N.E.2d at 1143. The Court further noted, “To demand proof of ‘the effort required’ or the ‘exertion needed’ . . . would be meaningless” in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma.” *Id.* at 1142. Additionally, the Court noted that such information “*may*” carry great weight “only where the work duty complained of is a common movement made by the general public.” *Id.* at 1142. The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to his employment as a State correctional facility, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

The law also holds that job duties may be varied and yet still repetitive. 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 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 (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 law requires that a claimant's entire work history be considered. *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48, 53. Due to the cumulative nature of repetitive injuries, courts routinely look back several years beyond the three-year limitations period, even decades, in evaluating a claimant's condition. See *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill.App.3d 915, 917–18, 828 N.E.2d 283, 287

(2005) (over 30 years); *Oscar Mayer*, 176 Ill.App.3d 607, 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).

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, “[A] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury.” *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant’s condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers’ Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee’s work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

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)

“Expert opinions must be supported by facts and are only as valid as the facts underlying them.” *In re Joseph S.*, 339 Ill.App.3d 599, 607, 274 Ill.Dec. 284, 791 N.E.2d 80, 87 (2003). “An expert opinion is only as valid as the reasons for the opinion.” *Kleiss v. Cassida*, 297 Ill.App.3d 165, 174, 231 Ill.Dec. 700, 696 N.E.2d 1271, 1277 (1998). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Torres v. Midwest Development Co.*, 383 Ill.App.3d 20, 28, 321 Ill.Dec. 389, 889 N.E.2d 654, 662 (2008). If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Modelski v. Navistar International Transportation Corp.*, 302 Ill.App.3d 879, 885, 236 Ill.Dec. 394, 707 N.E.2d 239, 244 (1999).

In addition to or aside from expert medical testimony, circumstantial evidence may also be used to prove a causal nexus between an accident and the resulting injury. *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App.3d 92, 631 N.E.2d 724 (4th Dist. 1994); *International Harvester v. Indus. Comm'n*, 442 N.E.2d 908 (1982).

“[I]t is for the Commission to determine which medical opinion is to be accepted, and it may attach greater weight to the treating physician’s opinion.” *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197, 1206 (2006).

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 (2007), see also

Peoria County Belwood Nursing Home v. Industrial Commission, 115 Ill.2d 524, 505 N.E.2d 1026 (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).

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.

In the instant case, Respondent did not dispute manifestation date or notice, and the Arbitrator finds that although Petitioner had been diagnosed with carpal tunnel prior to his alleged manifestation date, the date he chose is within the standards of the Act, as Petitioner's symptoms had worsened to the point where he feared he could no longer safely perform his work duties and required medical treatment. (PX 4, pp. 2-4)

Respondent disputes Petitioner's claim of repetitive injuries on the basis of accident and causal connection. In this regard, it relies on the opinion of its expert, Dr. Kitchens. Petitioner relies on the opinion of his treating physician, Dr. Bradley. The Arbitrator has carefully considered the medical and documentary evidence, Section 12 report, and Petitioner's testimony, and finds that for the reasons outlined below, Petitioner sustained an accident that arose out of and in the course of Petitioner's employment with Respondent, and that his injuries he sustained are causally related to his job duties.

In so finding, the Arbitrator notes that Dr. Bradley pointed out Petitioner did not have repetitive hobbies and that he opined that Petitioner's six-plus years of roof bolting and coal mining had at least contributed to his carpal tunnel. (PX 4, pp. 2-4) Although Dr. Kitchens testified that Petitioner's carpal tunnel was not related to his job duties, he did not elaborate or provide any insight as to the basis of his opinion, and rightly so, for the Arbitrator could likewise identify none. (RX 1, Dep. Ex. B; RX 1, p. 16) See *In re Joseph S.; Kleiss v. Cassida; Torres v. Midwest Development Co.; Modelski v. Navistar International Transportation Corp.*, supra.

Moreover, the Arbitrator is at a loss to understand how Dr. Kitchens, regardless of his opinions on causation, reviewed an EMG and nerve study that showed carpal tunnel, agreed that Petitioner had carpal tunnel, and admitted that Petitioner was symptomatic, yet declared that Petitioner's condition did not require even so much as conservative treatment. (RX 1, Dep. Ex. B) As with causation, the Arbitrator again notes that Dr. Kitchens did not provide a basis for his opinion with respect to treatment, and finds that Dr. Kitchens confusing opinions, which are offered with no explanation, cast serious doubt as to the quality of his examination as well as to his credibility.

To compound this, the Arbitrator notes that Dr. Kitchens did not even review the records of Dr. Bradley. (RX 1, pp. 27-29) In fact, Dr. Kitchens erroneously believed that Dr. Bradley, an

orthopedic surgeon, and Petitioner's treating physician, was a chiropractor, thus demonstrating that his opinions are poorly informed. *Id.*

Dr. Kitchens did, however, admit that the records he reviewed from Dr. Bell stated that Petitioner had worked in the coal mines with heavy equipment, overactivity, awkward flexing of the wrist, and used power tools with heavy vibration, leading to numbness and tingling in the hands. (RX 1, pp. 28-29)

Petitioner offered testimony without rebuttal that the roof bolting position is the hardest job in a coal mine because it is very manual-labor intensive and involves a lot of overhead work. (Tr. pp. 15-16) He testified that he firmly grips and grasps bolts and machines all day, forces steel shafts up into the roof, and his entire shift involves repetition. *Id.* His job description is compelling, and details a plethora of hand-intensive, repetitive activities that he performed as a roof bolter, including lifting, hanging, and pulling on cables, lifting, grasping, and rotating large bolts while in awkward positions, twisting battery connections, hammering, lifting blocks to build walls, and numerous other hand-intensive duties. (PX 10)

The Arbitrator notes that Dr. Kitchens testified that his understanding of the duties of a roof bolter were outlined on page two of his report. (RX 1, pp. 11-12) Although he noted a few aspects of Petitioner's job duties on page two, his short description is far less detailed than the typed job description and work history timeline Petitioner offered at Arbitration, and the job duties to which Petitioner testified. (Tr. pp. 15-16; PX 10; PX 11) In contrast, Dr. Bradley stated that he was in possession of Petitioner's work history timeline and typed job description, which he reviewed with Petitioner. (PX 4, p. 2) Therefore, the Arbitrator finds that Dr. Bradley is more informed concerning Petitioner's job duties than Dr. Kitchens, and as Dr. Bradley is Petitioner's treating physician and has seen him multiple times, this is not surprising.

Further, the Arbitrator notes that Petitioner does not have repetitious hobbies, that he is relatively young at 39 years of age, and that he does not have any comorbidities that would contribute to the development of compression neuropathies. (Tr. p. 17; PX 4, pp. 2-4) Petitioner testified that he did not have numbness and tingling in his hands prior to working for Respondent; however, the symptoms in his hands and arms began during the course of his employment with Respondent. (Tr. pp. 16-17)

Therefore, pursuant to the above findings and applicable law, the Arbitrator finds and concludes that Petitioner sustained an accident that arose out of and in the course of his employment with Respondent on June 17, 2024, and that the injuries he sustained to his bilateral upper extremities are causally related to the repetitive duties he performs for 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?

Issue (K): Is Petitioner entitled to any prospective medical care?

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691

N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

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

By the reports of Dr. Kitchens, Dr. Gornet, and Dr. Bradley, Petitioner has carpal tunnel, which was confirmed by diagnostic testing. (RX 1, Dep. Ex. B; PX 4; PX 7) Dr. Bradley also felt that Petitioner had cubital tunnel. (PX 4) To date, Petitioner has received only conservative treatment, including an injection to his right carpal tunnel. (PX 4, pp. 7-9) Thus, the Arbitrator finds that Petitioner's conservative treatment has been reasonable, necessary, and related to his job duties.

With regard to prospective treatment, the Arbitrator notes that initially, Dr. Bradley recommended surgical intervention in the form of an open carpal tunnel release; however, given the cervical component, Dr. Gornet recommended that his cervical spine should be addressed first. (PX 4; PX 5)

Dr. Bradley provided the injection to Petitioner's right carpal tunnel and indicated that if his symptoms initially improved following the injection but then returned, same would signal that his carpal tunnel was significantly contributing to his symptoms. (PX 4, p. 9) Although Dr. Bradley noted that the injection provided substantial benefit at his next follow up, by the time of Arbitration, Petitioner testified that same had helped only temporarily. (PX 4 pp. 11-12; Tr. p. 23)

Because Petitioner's symptoms were still improved at his latest appointment with Dr. Bradley, continued conservative treatment was recommended. (PX 4, p. 12) However, Petitioner's testimony that his symptoms have recurred supports Dr. Bradley's opinion that Petitioner's carpal tunnel is contributing to his symptoms, and therefore, it is reasonable to conclude that Petitioner will require further treatment once his cervical spine condition has been addressed. (PX 4, p. 9)

Therefore, pursuant to the above findings on causal connection, the Arbitrator finds that the medical treatment rendered to Petitioner thus far has been reasonable, necessary, and causally related to his injuries, which manifested on June 17, 2024, and that Respondent is liable for payment of the medical expenses as outlined in Petitioner's Exhibit 1. Further, the Arbitrator finds that Petitioner is entitled to prospective medical treatment, including, but not limited to, conservative and/or surgical treatment for his bilateral carpal and cubital tunnel syndrome.

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

Petitioner's restrictions which have prevented him from working are in relation to his cervical spine, and therefore, the disputed period of TTD is addressed in Petitioner's companion case, bearing case number 24WC17064.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020114
Case Name	Antonio Lopez v. Menard's
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0448
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Jay Johnson
Respondent Attorney	Monte Beaty

DATE FILED: 11/12/2025

/s/Marc Parker, Commissioner

Signature

21 WC 020114

Page 2

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$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.

NOVEMBER 12 2025

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o-11/06/25
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/s/ *Marc Parker*

Marc Parker

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Christopher A. Harris*

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC020114
Case Name	Antonio Lopez v. Menard's
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Jay Johnson
Respondent Attorney	John Morris

DATE FILED: 7/24/2024

/s/ Roma Dalal, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 23, 2024 4.99%

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
19(b)

Antonio Lopez

Employee/Petitioner

v.

Menards

Employer/Respondent

Case # **21 WC 020114**

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 16, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **September 23, 2020**, Respondent *was* operating under and subject to the provisions of the Act.

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

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 **\$38,584.00**; the average weekly wage was **\$742.00**

On the date of accident, Petitioner was **48** years of age, *married* with **1** dependent children.

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

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

ORDER

The Arbitrator finds Petitioner sustained a work-related accident on September 23, 2020 as described in the findings portion of the Arbitrator's decision, reaching maximum medical improvement as of December 16, 2020.

Petitioner's current condition of ill-being is not causally related to the work accident on September 23, 2020. Petitioner has reached MMI for the same.

Respondent shall pay directly to Petitioner all reasonable and necessary medical expenses as outlined in the decision, pursuant to the medical fee schedule or any negotiated rate through December 16, 2020 as provided in Sections 8(a) and 8.2 of the Act, to include the Grundy Radiologists medical bill. Treatment after December 16, 2020 is denied. Pursuant to Section 8.2(e), neither the Petitioner nor the Respondent is responsible for the remaining treatment after this date as the charges are unreasonable and unnecessary.

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

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

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



Signature of Arbitrator

July 24, 2024

Antonio Lopez,
Petitioner,
v.
Menard's,
Respondent.

Petitioner followed up with Dr. Wemhoff on May 15, 2023. Petitioner testified his back continued to hurt and Dr. Wemhoff still recommended surgery if he quit smoking. (T.22).

Currently Petitioner has a little bit of pain. His pain affects his daily activities, but he puts up with it. He continues to work light duty, but his pain is always there. He also has pain when he walks and sits. (T.23). Petitioner testified he cannot sleep, sweep, or mop. He wants to proceed with surgery. (T.24).

Petitioner testified he had prior treatment with Dr. Carson in 2017 because a tendon in his back got inflamed. (T.25).

On Cross-Examination, Petitioner confirmed he notified his supervisor about the accident. He also stated the accident report was completed by his manager. Petitioner testified he did not see a copy of the accident report. He then confirmed he signed the bottom of the accident report. (T.29). He was read the description of the accident, and testified he did not disagree with the description. (T.30). Petitioner testified his pain is in his low back not midback. (T.30).

Petitioner also saw the diagram within the Carson Chiropractic records. Petitioner testified his boss filled out the form for him. (T.31). When asked if he had treatments for the upper and lower back, Petitioner testified it was only the lower back. (T.32). He stated if the records stated he was provided treatment to his upper back they would be wrong. Petitioner also confirmed he treated in 2017. (T.33).

Petitioner testified between October 12, 2020 and June of 2021 he did not remember if he saw any physicians. (T.35). Petitioner testified he discussed his work accident with Dr. Wemhoff and requested him to opine in his report that the back pain was related to the work accident. (T.38).

Petitioner clarified he almost doesn't smoke anymore. (T.38). Petitioner reviewed the Carson Chiropractic records, indicating the intake form was completed by his manger but once again signed several pages. (T.38-39).

Petitioner testified he requested a few days of vacation before going to the physician in May of 2021. (T.39-40).

On Re-Direct, Petitioner clarified he requested to see the neurosurgeon from his manager and human resources. (T.41). He further clarified he has had no new injuries to his back since September 23, 2020. (T.41).

On Re-Cross, Petitioner stated he saw his primary physician because his back was hurting. (T.43). He did not want to utilize his own insurance for the neurosurgeon. (T.44).

Respondent placed Petitioner's employment file into evidence. Petitioner's overall employment reviews were positive. (RX1). Petitioner took a leave of absence from July 16, 2021 through August 12, 2021 for vacation. Petitioner requested this vacation on May 25, 2021. *Id.* at 52. Petitioner was noted to have a previous injury on September 8, 2017 when a team member pushed a board and he felt pain in the left low back. *Id.* at 55. There is also a note from Morris Hospital with a list of neurology specialists. A handwritten note indicated this was given to Petitioner as a starting point if approved and dated October 12, 2020. *Id.* at 92. The Arbitrator notes Petitioner indicated he had trouble setting this appointment. Respondent did not provide any evidence whether this visit was approved or not.

Medical Summary

Petitioner presented to Carson Chiropractic on September 7, 2017. (RX2). Petitioner presented with low back pain indicating his legs felt weak. *Id.* at 7. Petitioner noted that he was pushing a board that got stuck when he felt sharp pain in his low back and felt weak. *Id.* at 10. Petitioner underwent therapy through October 28, 2017. Petitioner was released to MMI. *Id.* at 42.

On September 24, 2020, Petitioner presented to Chiropractor Eric Carson at Carson Chiropractic. (PX1). Petitioner testified his paperwork was filled out by his supervisor but signed by him. The intake form contained a picture of a body requesting Petitioner place an X where he felt pain, and there was an "X" placed on the upper back, with no mark on the low back. The primary reason for visit was upper back pain which began the day before. *Id.* The intake form contained a description of the accident, which said Petitioner was twisting himself and got pain in the upper back. (PX1, p.16-19).

Petitioner stated he was injured on September 23, 2020, stating he lifted a wood plank and turned around with the plank and felt pain in his upper back between his shoulder blades. (PX1, p.9). Petitioner was positive for decreased motion, back pain, and muscle pain. Examination of the lumbar spine was normal. Petitioner was diagnosed with a strain of muscle and tendon of the back wall of thorax, pain in the right shoulder and pain in the left shoulder. Petitioner was scheduled for chiropractic care three times a week for three weeks. *Id.* at 11.

Petitioner followed up on September 26, 2020 for his upper back pain. His upper back pain had considerably improved since his last treatment. Manipulation was applied to T3-T4, T6-T7 and T10. Petitioner was to continue with the current schedule of care. (PX1, p.12). Petitioner returned on September 29, 2020. Petitioner reported improvement in the upper back pain and shoulder pain. He was to continue with treatment. *Id.* at 13.

Petitioner missed an appointment on September 30, 2020. His daughter called to state that Petitioner went to the doctor for low back pain and was told not to continue with chiropractic pain. His daughter stated his shoulder pain had dissipated and he was only experiencing low back pain. (PX1, p.13).

On September 30, 2020, Petitioner presented to Morris Hospital. Petitioner presented with a history of a twisting injury at work on September 22, 2020. He reported he was seeing a chiropractor and had one dose of the Naprosyn the night before. He said the pain was worse with muscle tightness and limited movement, but no numbness or tingling in the legs. Petitioner was diagnosed with a lumbar strain and prescribed ibuprofen. He was also put on light-duty work restrictions of no lifting more than 5 pounds, no pushing, and sitting only 25% of the day. (PX2, p.15-18).

Petitioner returned to Morris Hospital on October 5, 2020. He said he had been injured while carrying a lumbar load, and said he twisted funny and felt a pop in his back. He reported working light duty for two hours, doing 15 minutes of walking then going back to seated duty. (PX2, p.49). On examination, his straight leg raise was normal, and the doctor noted right side spasms. Petitioner had full range of motion with minimal pain. *Id.* at 52. Petitioner was diagnosed with a strain, currently appearing controlled. Petitioner was provided work restrictions. *Id.* at 51.

Petitioner returned to Morris Hospital on October 12, 2020. Petitioner stopped taking the prescribed medication but still continued to take over the counter Ibuprofen. Petitioner reported only very

minor improvement since his injury. (PX2, p.53). Examination noted abnormal muscle spasms and decreased range of motion. Petitioner was diagnosed with a strain and referred to neurosurgery within two to three days. *Id.* at 56-57.

Petitioner testified he did not seek low back treatment until June of 2021. Petitioner testified this was due to failure to secure authorization, being ignored by human resources and his manager. (T.15). He was provided paperwork and told to setup the appointment. He testified he called every day trying to secure the authorization. (T.41). He also he could have set up the doctor's office, but they required him to put down his insurance and he did not want to utilize the same. (T.44). During this time, Petitioner was still working light duty. (T.15).

Petitioner did seek treatment for other issues during this gap. On December 16, 2020, Petitioner reported headaches, pharyngitis, and general body aches. He did not mention low back pain at the time. (RX3, p.227). On May 10, 2021, Petitioner presented to Advocate Medical Group immediate care reporting dizziness and elevated blood pressure. He was found to be neurologically intact, with a normal gait, as well as normal and symmetric strength and reflexes. Petitioner was diagnosed with dizziness and elevated blood pressure. *Id.* at 223-224. Petitioner returned to Dr. Stoch on May 12, 2021 noting his vertigo was gradually improving. Petitioner was noted to be a continued smoker. Petitioner was to undergo a lipid panel and return in a month. *Id.* at 216- 219. Lastly, Petitioner underwent a lipid panel test on May 22, 2021. *Id.* at 203.

The Arbitrator notes Petitioner testified he was seen by his primary care physician Dr. Agnes Stoch in June of 2021 and was referred for an MRI. There are no records of any visit for low back pain or any complaints of low back pain in the office notes. The Arbitrator finds that this medical record could have provided a consistent or different history.

Petitioner underwent an MRI of the lumbar spine on June 19, 2021 noting chronic low back pain. The MRI reported stated, "new onset of lower back pain radiating down the left leg." The MRI revealed bilateral L5 spondylosis with associated grade 1 anterolisthesis of L5 on S1 with decreased intervertebral disc height, associated severe left and moderate right neural foraminal narrowing, and mild degenerative disc disease at L2-L3 and L3 – L4, and mild discogenic edema at multiple levels. (PX3, p.32-33).

On July 6, 2021, Petitioner presented to Dr. Augusthy of Advocate Medical Group. Petitioner was a referral from Dr. Agnes Stoch with a complaint of left low back pain and pain to the left posterior calf. (PX3, p.23). Straight leg examination elicited left side pain. Petitioner was diagnosed with chronic left low back pain, lumbar discogenic syndrome, myalgia, without shooting pain. *Id.* at 25. Dr. Augusthy noted Petitioner had significant pathology with multilevel issues, worse at L5-S1, which was not consistent with the symptoms. He opined L3-L4 may be the primary pathology and recommended aggressive targeting of the anti-inflammatory therapy. He administered a cortisone injection and recommended an epidural steroid injection on the left L4-L5. *Id.* at 26. He also recommended smoking cessation to improve blood flow for healing and to prepare for future surgical interventions. He noted tobacco use was a major contributor to poor surgical outcomes. *Id.*

On August 17, 2021, Petitioner began physical therapy. Petitioner reported he had a low back injury from 11 months ago. Petitioner was to undergo therapy two times a week for four weeks. (PX3, p. 17-20). Petitioner underwent therapy through August 2021 with limited improvement. On August 31,

2021 Petitioner was recommended additional therapy, two times per week for an additional four weeks. *Id.* at 5-7. Petitioner was discharged from physical therapy on September 28, 2021 after undergoing 7 visits. (PX4, p.22)

Petitioner returned to Dr. Augusthy on October 19, 2021 for his back pain. Petitioner did not schedule his ESI as he was out of the country. He reported ongoing pain in his low back down his left leg, with 50% improvement after the trigger point injection, after which the pain returned. Petitioner was discharged from physical therapy due to severe pain. Petitioner was diagnosed with lumbar discogenic pain syndrome and spondylolisthesis of lumbar region. Petitioner was agreeable to pursuing surgery and referred Petitioner to a neurosurgeon. (PX4, p.13-15).

On October 28, 2021, Petitioner presented to Dr. Michael Wemhoff of Advocate Medical Group at referral of Dr. Stoch. Petitioner presented for low back and left lower extremity pain. He stated the left lower extremity pain radiated from the left buttock down the posterior thigh and calf and denied any right lower extremity radiating pain. He noted the trigger point injection with Dr. Augusthy provided only transient relief, and he was therefore referred for a surgical consultation. Dr. Wemhoff noted Petitioner was a smoker. The Doctor reviewed Petitioner's MRI which revealed L5 on S1 grade I anterolisthesis with resultant severe neuroforaminal stenosis, particularly on the left side. Dr. Wemhoff diagnosed Petitioner with chronic low back and left lower extremity pain which appeared to symptomatic from right radiculopathy as a result of his L5-S1 spondylolisthesis. Petitioner had attempted conservative management but continued to have significant symptoms. He also has slight weakness manifesting as difficulty with heel walking on his left side. Dr. Wemhoff discussed surgical options, including a L5-S1 transforaminal lumbar interbody fusion. Petitioner was interested in surgery. Dr. Wemhoff noted Petitioner was attempting to cut back on smoking and smoking approximately 8 cigarettes per day. Dr. Wemhoff said Petitioner would have to completely quit smoking before he would proceed with the surgery. (PX5, p.24-26).

On October 28, 2021 Petitioner underwent an X-ray of the lumbar spine which revealed Grade 1-2 anterolisthesis of L5 on S1 with bilateral L5 spondylolysis. (PX4, p.9). Petitioner underwent a CT scan of the lumbar spine on November 27, 2021 which showed bilateral L5 spondylosis with grade 1 anterolisthesis of L5 on S1 and moderate degenerative changes present at L5-S1. (PX4, p.7; PX5, p.18). Petitioner also underwent a neck X-ray on December 18, 2021, ordered by Dr. Agnes Stoch. There is no record for a visit with Dr. Stoch, but the X-Ray states the indication was neck pain, no known injury. (PX4, p.3).

On June 26, 2022 Petitioner underwent a repeat lumbar MRI. Under the identifiers, it said the patient had low back pain and radiculopathy down both legs which was progressive for "several years" with no recent injury. (PX5, p.13). The impression was stable appearance of bilateral L5 spondylosis and associated grade 1 anterolisthesis and degenerative disc disease at L5-S1 with severe left and moderate severe right-sided neuronal foraminal narrowing, as well as minimal degenerative disc disease at L3-L4 and L4-L5. (PX5, p.13).

Petitioner returned to Dr. Wemhoff on July 14, 2022 and reported ongoing low back and left greater than right lower extremity pain. (PX5, p.2). Petitioner was diagnosed with L5-S1 spondylolisthesis. *Id.* at 3. The Doctor reviewed the options of continued conservative management to include physical therapy and injections. He also discussed surgical options such as a L5-S1 transforaminal lumbar

interbody fusion. Petitioner was to stop smoking prior to surgery and would need a preoperative nicotine test. *Id.* at 4.

On May 15, 2023, Petitioner returned to Dr. Wemhoff. Petitioner continued to have low back pain radiating down the left greater than right lower extremity. He reported his symptoms were unchanged and continued to be significant limiting his daily life. Petitioner reported his symptoms began on September 23, 2020 at which time he was at work and lifting and twisting with a table. He reported smoking less. Petitioner reiterated his interest in pursuing surgical intervention. Dr. Wemhoff again reiterated the importance of smoking cessation prior to surgery. (PX6, p.1-2).

Petitioner placed Advocate Medical Group and Grundy Medical Bills into evidence. (PX7 and 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. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

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

In this case the Arbitrator finds Petitioner's testimony does not comport with the medical evidence submitted into trial. The Arbitrator finds inconsistencies in Petitioner's testimony and within the medical evidence as detailed below.

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 September 23, 2020 he injured his back while turning and twisting while lifting a piece of wood. Petitioner provided immediate notice and began medical care following the injury.

The Arbitrator notes the injury sustained by Petitioner came from a risk distinctly associated with employment. Therefore, the Arbitrator finds Petitioner's accident arose out of and in the course of employment with Respondent.

With respect to Issue (F) Is Petitioner's Present Condition of Ill-Being Causally related to the injury, the Arbitrator finds the follows:

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (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, 369 N.E.2d 853 (1977). Where a Petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. *Id.* The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission*, 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. *Smith v Industrial Commission*, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission*, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Compensation Commission*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). Even when a preexisting condition exists, recovery may be had if a claimant's employment is a causative factor in his or her current condition of ill-being. *Sisbro, Inc. v. Industrial Commission*, 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. Industrial Commission*, 834 N.E.2d 583 (2d Dist. 2005).

It is axiomatic that the weight accorded an expert opinion is measured by the facts supporting it and the reasons given for it; an expert opinion cannot be based on guess, surmise, or conjecture. *Wilfert v. Retirement Board*, 318 Ill.App.3d 507, 514-15 (1st Dist. 2000).

The Arbitrator notes that the current dispute at this hearing is causation for Petitioner's surgical recommendation for his back. In this case, the Arbitrator finds Petitioner's current condition of ill-being is not causally related to the injury.

The Arbitrator finds that Petitioner sustained a compensable accident. The main dispute is whether Petitioner's current condition in regards to his back is related to his original injury of September 30, 2020. The Arbitrator finds Petitioner has failed to meet his burden of proof in establishing that his ongoing medical condition and medical treatment including the need for back surgery is causally related to the work incident of September 30 2020. The Arbitrator finds the same based on Petitioner's gap in medical care, the lack of expert opinion, Petitioner's testimony, and Petitioner's medical records.

The Arbitrator finds that per the incident report Petitioner indicated he was lifting a board and twisted, feeling mid-upper back. The initial medical records also indicated Petitioner felt pain in his upper back and bilateral shoulders. The Arbitrator notes, however, Petitioner sought low back medical care as of September 30, 2020, only one week later. As such the Arbitrator does not dispute that Petitioner had some initial low back complaints.

The Arbitrator further notes Petitioner was referred to a neurosurgeon but did not seek treatment for the same. Petitioner testified he called every day for authorization of the visit. The Arbitrator, however, also notes that Petitioner could have set up an appointment through his own insurance but chose not to utilize his own insurance. The Arbitrator notes Petitioner testified he was in a lot of pain yet never attempted to set up his own appointment. In addition, there was nothing in the medical records showing telephone calls of Petitioner attempting to set up any type of appointment.

Instead, Petitioner treated with his PCP for an array of other issues and never mentioned back pain. Petitioner then went for an MRI. There is no medical record indicating what prompted the MRI referral. Petitioner's PCP had no documentation of continued pain from his work injury. In addition, no physician opined that Petitioner's surgery is related to the original work accident. The surgery is noted for chronic issues. The Arbitrator cannot decipher what impact the initial work injury had on the surgery request or whether this was due to age related degenerative findings. There is no opinion indicating what is medically necessary.

The Arbitrator also notes the significance in the seven-month gap in treatment. When Petitioner began low back care, he noted right sided spasms. When he returned for treatment, the pain was mostly focused on the left side. Again, the Arbitrator notes no treating physician explained what was related to the work injury. The Arbitrator further finds it troubling there is no record from the primary care physician when Petitioner returned to care. Petitioner testified he saw a primary care physician, to whom he first made his pain complaints to in June of 2021. This record is not included in any of Petitioner's exhibits. As such, there is no way to determine what happened in the months in between the accident, whether Petitioner initially related all his complaints to the work accident, or whether there was another explanation for the changed and worsening symptoms. Petitioner also had opportunities to mention the low back pain as he had other visits with his PCP between October 2020 and June 2021, but did not mention low back pain in any of them.

Instead, the records after this date consistently state Petitioner was presenting for “chronic low back pain,” with the MRI report explicitly stating Petitioner had developed new “low back and left leg pain.” The diagnostic testing all noted degenerative disc disease. Petitioner also did not mention the work accident to Dr. Wemhoff until the last visit in May of 2023. Petitioner testified he asked Dr. Wemhoff to provide a causation opinion; however, no causation opinion was rendered. The Arbitrator does note on October 28, 2021, Dr. Wemhoff diagnosed Petitioner with chronic low back and left lower extremity pain which he said appeared to be symptomatic from right radiculopathy as a result of his L5-S1 spondylolisthesis.

Even after Petitioner reported the accident to Dr. Wemhoff on May 15, 2023, Dr. Wemhoff continued to opine the pain and need for surgery was related to the spondylolisthesis at L5-S1, without any mention of causation to the work accident.

The Arbitrator cannot decipher whether this accident, given the seven-month gap, aggravated or accelerated the spondylolisthesis, without a medical opinion. Dr. Wemhoff does not provide any explanation or reasoning whether the spondylolisthesis is related to the original injury. The Arbitrator cannot speculate in regards to the same.

The Arbitrator also notes some inconsistencies with Petitioner’s testimony. On direct examination, Petitioner testified he had treated for his low back in 2017 with Carson Chiropractic and on Cross-Examination, he said he had no memory of this treatment. Petitioner also testified he quit smoking, however, then later indicated he almost quit smoking. In addition, the medical records indicate Petitioner was still a smoker. Petitioner also claimed he was still working light duty. Yet, Petitioner’s June 9, 2021 evaluation stated Petitioner was willing to do any job. He was always on time with a positive attitude. (RX1, p.50). There was no indicated Petitioner was not performing his normal job activities. In fact, the Arbitrator finds Petitioner was receiving good employment reviews noting he was doing all sorts of jobs.

The Arbitrator also notes the inconsistencies with the accident reports and initial treating records. Petitioner testified the accident report and the chiropractic diagram documenting where he marked his injuries were incorrect, yet he signed all the documents. He further testified that he initially received low back treatment while the initial few visits documented that treatment focused on Petitioner’s midback and shoulders. The Arbitrator finds all of these inconsistencies to add up, doubting Petitioner’s credibility.

Based on the medical reporting, the significant gap in medical care, the lack of causation of opinion from Petitioner’s treating physician, the Arbitrator finds Petitioner has failed to meet his burden in establishing causation. The Arbitrator finds Petitioner sustained injuries to the upper back, bilateral shoulders and low back reaching maximum medical improvement on December 16, 2020, when he went to his PCP for an array of unrelated complaints, no longer complaining of low back pain. The Arbitrator further finds Petitioner’s current condition of ill-being after December 16, 2020 was not related to the work accident.

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 all medical treatment through December 16, 2020 were reasonable and necessary and related to the work accident of September 23, 2020. In reviewing the medical services provided to Petitioner, the Arbitrator finds Respondent has not paid all appropriate charges for all reasonable and necessary medical services through December 16, 2020. Petitioner submitted a medical bill from Grundy Radiologists for a service date of September 30, 2020. The Arbitrator awards this unpaid medical. Respondent shall pay reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act.

Medical bills after December 16, 2020 are denied. Pursuant to Section 8.2(e), neither the Petitioner nor the Respondent is responsible for the remaining treatment after this date as the charges are unrelated.

With respect to Issue (K) whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. Regarding the issue of whether Petitioner is entitled to any prospective medical care, following consideration of the testimony and evidence presented, the same is incorporated by reference. Having found Petitioner failed to meet his burden in proving his back is causally related to the September 23, 2020 injury, the Arbitrator also finds Petitioner is not entitled prospective medical treatment in regards to his back.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002587
Case Name	Paul Zientek v. City of Champaign
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0449
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kenneth Reifsteck

DATE FILED: 11/12/2025

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 CHAMPAIGN

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Paul Zientek,

Petitioner,

vs.

NO: 22 WC 002587

City of Champaign,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 4, 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 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.

NOVEMBER 12 2025

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MEP/ypv

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/s/ Maria E. Portela

/s/ Christopher A. Harris

/s/ Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC002587
Case Name	Paul Zientek v. City of Champaign
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	Stephen Kelly
Respondent Attorney	Kenneth Reifsteck

DATE FILED: 10/4/2024

/s/ Adam Hinrichs, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 1, 2024 4.215%

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**

Paul Zientek
 Employee/Petitioner

Case # 22 WC 002587

v.

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

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ 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 **11/8/2021**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did 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 **\$94,521.96**; the average weekly wage was **\$1,817.72**.

On the date of accident, Petitioner was **32** years of age, *married* with **1** dependent children.

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

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

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

ORDER

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

The Petitioner's request for benefits under the 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

October 4, 2024

FINDINGS OF FACT

Petitioner filed an Application for Adjustment of Claim on January 31, 2022, alleging that exposure from firefighting activities caused skin cancer. The date of the alleged injury is November 8, 2021. A hearing was held on August 12, 2024, and the issues in dispute were: (1) whether the accident/condition arose out of and in the course of employment; (2) whether the condition is causally connected to his exposure; (3) liability for unpaid medical bills; (4) liability for TTD payments; and (5) the nature and extent of the injury.

On the date of the alleged accident Petitioner was 32 years old and had been employed as a firefighter for Respondent for just over 5 years. TX 9.

Petitioner testified that he had a pre-employment physical examination upon being hired by Respondent. TX 10. He passed that physical examination and became a firefighter. *Id.* He was promoted to “Engineer” in November 2023. *Id.* As a fireman, Petitioner responded to medical emergencies, fire calls, and a variety of other emergencies. TX 11.

In September 2021, Petitioner was diagnosed with a malignant melanoma on the right lower leg. TX 11; PX 6, pg. 552. This was discovered when Petitioner noticed he had a mole that was getting larger and darker. TX 11. Upon receiving the diagnosis, he completed an accident report. TX 12. He testified that he had never been a smoker, consumed alcohol, suffered a stroke, been diagnosed with diabetes or a thyroid condition, or had a family history of the type of cancer diagnosed. TX 13.

Petitioner testified as to his job description as a firefighter for Respondent. His responsibilities included performing hazardous tasks under emergency conditions, close contact with toxic gases, explosive mixtures, and other dangerous material, and responsibility for working fires and protection of life. TX 14; PX 11. While on the job, Petitioner testified that he had been exposed to nitrogen dioxide, sulfur dioxide, mercury, radiation, and soot. TX 15. He testified that firefighters are also exposed to foam used to smother certain types of fires, diesel exhaust from firetrucks, asbestos, and other materials. TX 22-23. The fire calls that Petitioner responded to involved residential fires, commercial fires, automobile fires, wildland fires, and factory fires. TX 16-17. With respect to factory fires, Petitioner testified that he was exposed to certain smoke, toxins and carcinogens. TX 17. Some calls involved “overhaul” which required him to take apart walls, ceilings, peel apart windowsills, and demolition work to see if anything that could not be seen with his eyes had caught fire. TX 17.

Petitioner also testified about the protective gear he uses as a firefighter. One such item is a self-contained breathing apparatus (SCBA) to protect him from harmful gases. TX 17-18. The SCBA is also used to protect firefighters from low oxygen conditions, fighting fires, and during overhaul. TX 18. He also wore “turnout gear” which is a protective covering worn to prevent contact with toxins while engaged in firefighting activities. TX 20. At the time of the alleged exposure, this gear was cleaned depending on the level of how dirty it was. TX 21.

Upon noticing the skin condition on his leg, Petitioner presented to Carle Dermatology for an evaluation. TX 23. A biopsy was taken and sent to Mayo Clinic. *Id.* The biopsy was determined to be malignant. TX 24; PX 6, p. 551. A surgical procedure to remove the cancerous area was performed on November 8, 2021. TX 26-27; PX 3 p. 17-18. After surgery, a “skin filler” was used to replace the removed tissue so that a skin graft could be performed. TX 27; PX 3, p. 137-138. The tissue did not grow into the filler so the filler was removed, and the wound was left to heal until a skin graft could be performed. TX 28; PX 3, p. 260-261. A skin graft was performed in late December 2021. TX 30. During that procedure skin was taken from his right upper hip and used to cover the area on the left ankle. TX 30-31. At hearing, a 3–4 inch square area on the left lower leg,

where the skin cancer was removed, was visualized and noted for the record. TX 31-32. Following the skin graft the area was allowed to heal until such time it was safe to return to work without disturbing the grafted area. TX 33.

Petitioner was off work due to the skin condition from November 5, 2021, until being released to full duty on January 31, 2022. TX 33. Since that time, he has worked without restrictions and followed up with his physician every three months. TX 34. At the three-year mark, the checkups will be performed every 6 months until the 5-year mark. *Id.* Petitioner testified that his skin is currently clear and there are no other signs of cancer. TX 34-35. The Petitioner testified that at the time of trial, he still experiences numbness to the scar site and it can be tender and painful to the touch. TX 37. On cross-examination, the Petitioner was asked about prior jobs he had and sun exposure. Petitioner testified that when he worked outside, he wore long pants. TX 42.

Dr. David Fletcher Deposition Testimony

On June 1, 2023, the parties deposed Dr. David Fletcher, who is board certified in occupational medicine, which required an extra year of training in epidemiology. PX 8, p. 572-573. Dr. Fletcher testified that he reviewed the medical records, performed a physical examination of the Petitioner, took a history from the Petitioner, and prepared a report. PX 8

Dr. Fletcher testified that he diagnosed the Petitioner with a successful excision of melanoma, with no current metastatic spread. PX 8, p. 590. Dr. Fletcher noted that Petitioner was atypical nevi which some studies suggest lead to a higher incidence of melanoma. *Id.* at 591. However, Dr. Fletcher opined that the Petitioner's melanoma was directly related to the work activities for over a decade as a firefighter doing fire suppression as there are research studies that show an association between firefighting and developing melanoma. *Id.* Dr. Fletcher testified that in reaching his opinion he also considered that the Petitioner had an unusual spot for melanoma, and Petitioner had no family history, had no other skin lesions, and the age of onset of the melanoma was very young. *Id.*

Dr. Fletcher testified that he is also an epidemiologist and is very familiar with research studies that show an association between firefighters and melanoma. *Id.* Dr. Fletcher further testified that firefighters are exposed to environmental smoke as well as many different toxins and chemicals such as paint, benzene, and PCBs. *Id.* Dr. Fletcher referenced literature which looked at exposure to toxic chemicals on the skin from failure to properly clean firefighting gear, and firefighters get re-exposed by wearing their protective gear again. *Id.* at 593.

Dr. Fletcher opined that the medical treatment the Petitioner received was reasonable and necessary. *Id.* at 598.

On cross-examination, Dr. Fletcher testified that he was not aware of Petitioner's PCB levels were, but that a blood test could make that determination. *Id.* at 601. Dr. Fletcher testified that he cited the first article contained in PX 9, "Firefighting and melanoma, epidemiological and toxicological associations" in his report and findings. *Id.* at 598-600. Dr. Fletcher testified that he did not cite the second article contained in PX 9, "Characterization of Firefighters Smoke Exposure" in his report. *Id.* at 602. Dr. Fletcher testified that the second and study cited in his report, "Cancer incidence and mortality among firefighters," found that "exposure of skin to UV radiation is the most important risk factor for malignant melanoma" and that "exposure to PAHs, arsenic, and other carcinogenic substances covering and penetrating the PPE and the skin may also contribute to the elevated risk." *Id.* at 603. Dr. Fletcher testified that this study was limited to Florida firefighters' exposures, however, there would be some overlap with central Illinois firefighters. *Id.* at 604.

Dr. Marina Kuznetsova Deposition Testimony

On August 3, 2022, the parties deposed Dr. Marina Kuznetsova regarding this case. Dr. Kuznetsova has worked in oncology for over 45 years, and has a M.D. degree, a Ph.D. in radiobiology, oncology, and radiology. RX 1, p. 4. Dr. Kuznetsova has been licensed to practice medicine in the United States for over 30 years, and is a licensed physician and surgeon specializing as a radiation oncologist. *Id.* at 5. Dr. Kuznetsova examined the Petitioner, reviewed the relevant medical records, and prepared a report in March 2022. *Id.* at 7-8.

Dr. Kuznetsova diagnosed the Petitioner with dysplastic nevi syndrome, a genetic condition, making Petitioner more prone to development of a malignant melanoma. *Id.* at 10. Dr. Kuznetsova testified that Petitioner's diagnosis and subsequent medical treatment was appropriate for his malignant melanoma. *Id.* at 13, 16. Dr. Kuznetsova testified that the Petitioner's malignant melanoma was not causally related to his employment, as the development of melanoma is a genetical predisposition and environmental factors do not have a role. *Id.* at 16-17. Dr. Kuznetsova testified that exposures to environmental factors would take many decades from the time of the exposure to the malignancy, and Petitioner is too young to have sustained such exposures to put him at risk. *Id.* at 17.

On cross-examination, Dr. Kuznetsova testified that she knew Petitioner was a firefighter and worked in construction. *Id.* at 32. Dr. Kuznetsova testified that she was not provided with a copy of the Petitioner's job description. *Id.* at 35. Dr. Kuznetsova testified that she was not provided with a specific list of chemicals Petitioner was exposed to. *Id.* at 35-36.

Dr. Kuznetsova testified that Petitioner advised her he had no family member that he was aware of that had been diagnosed with melanoma. *Id.* at 38-39.

Case Reports: Firefighting and Melanoma

Petitioner offered a case report of a 71-year-old firefighter with 33 years of work exposure, 1973 to 2006, as a smoke diver who presented with a swollen cervical lymph node and left lung metastasis when he was 61 years old. PX9. The firefighter did not have a family history, was a non-smoker, and the "use of safety equipment was sparse during the first decades" of his work as a firefighter. *Id.* The authors concluded that the history of extensive exposure to this firefighter did contribute to the development of their melanoma, given the exposure to Polychlorinated biphenyls (PCBs) in the course of his work in fighting fires as PCBs are found in building materials. *Id.* The authors also concluded that they would not have made this finding if the patient "had worked for a shorter duration or in a more rural area, with fewer fires in relation to the industrial activities and in buildings as well as waste fires." *Id.*

The second report contained in PX 9, "Characterization of Firefighter Smoke Exposure," was not specifically cited by Dr. Fletcher in his report. However, it is contained in the record and found that smoke exposures "may be a potential contributing factor to the excess incidence of acute coronary heart disease events found amongst firefighters." *Id.* at 637. The report also found, that with the exception of arsenic, other possible or probable human carcinogens were not present in the collected smoke particulate concentrations at levels exceeding NIOSH and OSHA recommended exposure limits. *Id.* at 638. Finally, the report found that transdermal absorption can occur through simple behavioral activity (face wiping, removing gloves, adjusting garments) but further study is needed to "further characterize the deposition of contaminants on firefighter protective equipment and health effects related to the potential absorption through the skin, especially where exposure is protracted from seldom cleaned equipment." *Id.*

The second and third studies cited by Dr. Fletcher in his report, “Cancer incidence and mortality among firefighters,” and “Firefighter Skin Cancer and Sun Protection Practices. Evidence From the Florida Firefighter Cancer Initiative,” respectively, were not included in the record.

CONCLUSIONS OF LAW

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

Section 6(f) of the Illinois Workers' Compensation Act provides for a rebuttable presumption that the condition of cancer in a firefighter with greater than five years of service is related to the hazards or exposures of his employment. 820 ILCS 305/6(f). Petitioner had five years of experience as a firefighter at the time of his diagnosis and developed skin cancer on his left leg. To rebut this presumption, the employer needs only offer some evidence sufficient to support a finding that something other than claimant's occupation as a firefighter caused his condition. *Johnston v. IWCC*, 2017 IL App (2d) 160010WC at ¶ 45. Respondent has rebutted the presumption by offering the expert medical opinion of oncologist Dr. Marina Kuznetsova, M.D., Ph.D. RX, 1.

Once a party has successfully rebutted the presumption, the presumption vanishes, and the parties proceed as if the presumption never existed. *Johnson*, 2017 IL App (2d) at ¶ 53. To obtain compensation under the Act, it is Petitioner's burden to show, by a preponderance of evidence, that he suffered an injury which arose out of and in the course of employment. *Sisbro v. IWCC*, 207 Ill.2d 193, 203, 797 N.E.2d 665, 671 (2003). An injury occurs “in the course of employment” when it occurs within the boundaries of employment, and “arises out of” employment when the injury had its origin in some risk connected with it so as to create a causal connection between the employment and the condition. *Id.*

In support of his claim, the Petitioner offered the expert medical opinion of Dr. David J. Fletcher; MD. Dr. Fletcher is board certified in occupational and preventive medicine. PX 2; PX 7 p. 563. He testified that he has practiced medicine in this specialty since 1986. RX 8 p. 571. Part of that specialty includes the interface of the worker and the workplace and understanding workplace hazards that may contribute to human illness and injuries. PX 8 p. 572. In his report, Dr. Fletcher opined that Petitioner's malignant melanoma was related to his firefighting activities. PX 7 p. 557. In his report, Dr. Fletcher cites three articles that he asserts support his causation opinions. PX 7 p. 557. Those articles are “Firefighting and melanoma, epidemiological and toxicological associations: a case report,” “Cancer incidence and mortality among firefighters,” and “Firefighter Skin Cancer and Sun Protection Practices. Evidence From the Florida Firefighter Cancer Initiative.” *Id.* at fn. 1-3. Petitioner also offered another report into the record that was referred to by Dr. Fletcher in his testimony, “Characterization of Firefighter Smoke Exposure.” These reports, however, do not support the causation opinion of Dr. Fletcher.

The article “Firefighting and melanoma, epidemiological and toxicological associations: a case report” is a case report. Dr. Fletcher agreed in his deposition that this particular article merely detailed the diagnosis, treatment, and follow-up of a 71-year-old firefighter who had been diagnosed with melanoma at age 61. PX 8, p. 599. The subject of this article had been a firefighter for 33 years who had fought numerous fires in urban areas, houses, and of particular concern, industrial buildings. *Id.* at 600. Further, the article noted that the use of safety equipment was sparse during the early decades of the subject's employment. *Id.* Dr. Fletcher agreed the conclusion of that article is that the occupational exposure may have contributed to the individual's risk. *Id.* at 601. Additionally, the subject of the article's age, experience, and exposure are not at all similar to Petitioner's. Moreover, the findings in this report support the opinion of Dr. Kuznetsova that exposures to environmental factors would take many decades from the time of the exposure to the malignancy, and Petitioner is too young to have sustained such exposures to put him at risk. RX1 p. 7.

The second article cited by Dr. Fletcher is “Cancer incidence and mortality among firefighters.” Dr. Fletcher testified that the article states that “exposure to skin of UV radiation is the most important risk factor for malignant melanoma.” PX 8 p. 603. The article also states that exposure to various chemicals covering and penetrating the personal protective equipment and the skin may also contribute to an elevated risk of skin cancer. *Id.* at 603. This case report was not included in the record.

The third article, “Firefighter Skin Cancer and Sun Protection Practices. Evidence From the Florida Firefighter Cancer Initiative” is an article cited by Dr. Fletcher for the opinion that melanoma is an occupational disease which supports an association between exposure during firefighting and melanoma. PX 7 p. 557; PX 8 p. 601. This article was limited to exposure firefighters in the State of Florida. Dr. Fletcher admitted that the sun exposure in Florida is different than that in Illinois, along with differences in building products. PX 8 pg. 604. Dr. Fletcher agreed that the conclusion in that particular article is that exposure experienced by firefighters potentially increases the risk of skin cancer. *Id.* at 604-605. This case report was not included in the record.

Finally, the second case report contained in PX 9, “Characterization of Firefighter Smoke Exposure,” was not specifically cited by Dr. Fletcher in his report, and Dr. Fletcher testified that he did not cite this case study in his report. RX 8 p. 602. However, Dr. Fletcher seemingly referenced the report in his testimony when he opined that exposure to toxic chemicals on the skin from failure to properly clean firefighting gear, and firefighters getting re-exposed by wearing their contaminated protective gear again can increase the risk of melanoma. *Id.* at 592-593. While the report found that transdermal absorption can occur through simple behavioral activity (face wiping, removing gloves, adjusting garments), it also found that further study is needed to “further characterize the deposition of contaminants on firefighter protective equipment and health effects related to the potential absorption through the skin, especially where exposure is protracted from seldom cleaned equipment.” PX9, p. 638

Respondent’s examiner, Dr. Kuznetsova, is board certified, and re-certified, by the American Board of Radiology, and has extensive training in radiation oncology. RX 1 Dep. Ex. 2. Additionally, she holds a Ph.D. in radiation oncology and diagnostic radiology. *Id.* She testified that she has worked in oncology for more than 45 years. RX1 p. 4. Her examination of Petitioner included a review of his medical records. *Id.* at 8. Dr. Kuznetsova’s physical examination included a thorough examination of Petitioner’s skin. *Id.* at 9. She noted that Petitioner is a “fair skinned” individual with multiple freckles and faint pigmented lesions. *Id.* at 10. Based upon the number of freckles and irregular looking lesions, Dr. Kuznetsova diagnosed Petitioner with “dysplastic nevi syndrome,” and, as a consequence, found that Petitioner would be more prone for development of malignant melanoma than those without this genetic condition. *Id.* at 10-12.

While Dr. Kuznetsova diagnosed Petitioner with melanoma, she opined that this condition was not related to his employment as a firefighter. *Id.* at 16-17. She based her opinion on her the fact that it is very difficult to induce melanoma on the body, as it is usually genetical predisposition. *Id.* at 17. Her diagnosis of dysplastic nevi syndrome predisposed Petitioner to the development of melanoma “independent of what he does with his life, if he has sun exposure, doesn’t have sun exposure, if he works with radioactive materials or any type of employment” and raised his chances for developing melanoma significantly more than the general population. *Id.* at 17. Dr. Kuznetsova testified that “environmental factors would usually require many decades, from the time of exposure to the development of malignancy.” *Id.* Here, the Petitioner was exposed to environmental factors for just over five years. Dr. Kuznetsova opined that “genetic predisposition plays a role in the development of any cancers,” and everything else is more or less speculative, as the mechanisms of the development of oncological conditions are not well known. *Id.* at 18. Dr. Kuznetsova found that Petitioner’s work did not cause his cancer, or aggravate his condition. *Id.* at 20.

While the Petitioner has offered an intriguing medical hypothesis in the form of testimony and medical literature to support his claim that his job duties as a firefighter contributed to the development of his malignant melanoma, it is not supported by current medical literature. Dr. Fletcher's opinions rely on this medical literature which is, at best, inconclusive on the question of whether the exposures Petitioner sustained in the course and scope of firefighting for five years would contribute to his skin cancer. The current medical literature does support a conclusion that firefighting may contribute, with sustained exposure over multiple decades, to cancer; however, the case reports specifically found that further study was necessary in order to address that question fully.

Respondent's examiner, Dr. Kuznetsova's opinion that Petitioner's five years as a firefighter did not contribute to the development of his malignant melanoma is supported by her training and many decades in oncology practice, as well as the current medical literature. The Arbitrator is persuaded by the opinions of Dr. Kuznetsova.

The Arbitrator finds that the Petitioner has not proven by a preponderance of the evidence that his work duties as a firefighter contributed to the development of his malignant melanoma.

Therefore, the Arbitrator finds that the Petitioner has not proven that (a) he sustained an accident arising out of and in the course of his employment by the Respondent, or that (b) his current condition of ill being is causally related to his firefighting duties.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC014497
Case Name	George Lomelino v. State of Illinois - Illinois Department of Corrections - Jacksonville Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0450
Number of Pages of Decision	23
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Joseph L. Moore

DATE FILED: 11/12/2025

/s/ Carolyn Doherty, 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	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GEORGE LOMELINO,

Petitioner,

vs.

NO: 22 WC 14497

STATE OF ILLINOIS – ILLINOIS
DEPARTMENT OF CORRECTIONS –
JACKSONVILLE CORRECTIONAL
CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission agrees with the ultimate finding of compensability following the Arbitration hearing. However, the Commission notes that the reference to and reliance on a multitude of clearly inaccurate case citations completely undermines the efficacy of the Arbitrator's decision and necessitates that the Commission re-write the decision to read as follows.

I. STATEMENT OF FACTS

A. Background and Accident

Petitioner testified that he began working for Respondent as a Correctional Officer at the Jacksonville Correctional Center on June 22, 2015, and held that position on the accident date. He stated that his job duties included ensuring the safety and security of the individuals in

custody.

Petitioner testified that on February 18, 2022, at approximately 2:30 a.m., he was transferred from Tower 1 to the dietary post for the second half of his shift. He stated that it had been snowing. According to Petitioner, he was dropped off by a van and walking up to the main entrance to the facility and carrying his bag when he slipped and fell on the ice and snow. He stated that he was on the clock when the fall occurred. Petitioner reported the injury to his supervisor, Major Higgins. Petitioner was relieved from duty to complete a workers' compensation packet but then finished his shift. He stated that he contacted his doctor later that day and was referred to Midwest Occupational Health Associates (MOHA) for treatment.

B. Medical Treatment

On February 18, 2022, Petitioner was seen by APRN-CNP Jane Kamp at MOHA, providing a consistent history of the accident and complaining of pain on the lateral aspect of the left knee and pain with edema on the posterior aspect of the left knee. Nurse Kamp prescribed extra-strength Tylenol and Naproxen. Petitioner was cleared for his regular job duties.

On February 28, 2022, Petitioner underwent X-rays of both knees which were read as showing no acute osseous finding, small bilateral joint effusions, and mild bilateral patellofemoral osteoarthritis, left worse than right. Nurse Kamp diagnosed persistent left knee pain and improved right knee pain, referring Petitioner for physical therapy and releasing him to work without restrictions.

Between March 10, 2022, and April 22, 2022, Petitioner Underwent 10 sessions of physical therapy at Jacksonville Memorial Hospital.

On March 11, 2022, Petitioner followed up at MOHA, complaining that his left knee was worsening, particularly when using stairs. Nurse Kamp prescribed Relafen and a knee brace. On March 28, 2022, Petitioner rated his pain at 3/10, but persistent. Nurse camp ordered a left knee MRI.

On September 6, 2022, Petitioner underwent a left knee MRI at the Springfield Clinic. The radiologist's impressions were of: (1) focally severe osteoarthritis at the lower lateral patellofemoral articulation; (2) patella high-riding and slightly laterally tilted/subluxed; (3) infrapatellar fat pad edema laterally indicating patellofemoral impingement; (4) mild proximal patellar tendonitis; (5) an oblong ganglion cyst at the posterior superior knee along the anterior aspect of the popliteal vessels, likely originating from the sub-tendinous bursa of the medial head gastrocnemius origin.

On September 23, 2022, Petitioner followed up at MOHA, rating his pain at 4/10. Nurse Kamp noted that it took some time for the left knee MRI to be approved and scheduled. She reviewed the MRI report. Nurse Camp discharged Petitioner from care and recommended that Petitioner see his PCP and an orthopedist, opining that the severe osteoarthritis of the left knee and the right knee pain were not work-related.

On November 15, 2022, Petitioner saw Dr. Piero Capecci for an evaluation of his left knee. Dr. Capecci diagnosed left knee pain with mild patellofemoral arthritis, specifically more focally severe arthritis of the lower portion of the patellofemoral articulation. Dr. Capecci recommended neutraceuticals as well as anti-inflammatories, activity modification, weight control, injectables, physical therapy and surgical recommendations, with a three-month follow-up to consider an injection.

On March 10, 2023, Petitioner returned to Dr. Capecci, reporting that his pain had not improved and was 5/10 all of the time. Dr. Capecci recommended that Petitioner continue taking Vitamin E and Cosamin. He also suggested that Petitioner talk to his PCP about restless leg syndrome and that Petitioner could consider an injection. Petitioner was advised to return as needed.

On March 31, 2023, Petitioner presented to Dr. John Miller at Loyola University Medical Center for a second opinion regarding his left knee. Petitioner reported seeing an outside orthopedist. He stated that he was told he had arthritis, but it was in the anterior aspect of the knee. Petitioner reported pain predominantly localized to the posterior aspect and denied anterior knee pain. Following an examination and review of Petitioner's MRI, Dr. Miller's assessment was of left knee patellofemoral osteoarthritis as well as a Baker's cyst, leading to hamstring tendinitis. He noted that the cyst is persistent and indirectly related to the arthritis. Dr. Miller recommended and administered a corticosteroid injection to see whether it improved the swelling in the knee and indirectly improve the tendinitis posteriorly. Petitioner was recommended physical therapy and possible dry needling, and advised to return as needed.

On May 12, 2023, and between November 8, 2023 and January 16, 2024, Petitioner underwent 11 sessions of physical therapy and rehabilitation at Jacksonville Memorial Hospital. According to the therapist, Petitioner demonstrated improvements in left ankle/gastric flexibility as well as subjectively reporting improvements in pain. The therapist also noted that Petitioner benefitted greatly from dry needling interventions of the gastric muscles, resulting in reduced left knee pain.

C. Section 12 Examination and Deposition by Dr. Michael Nogalski

On June 28, 2023, Petitioner underwent a Section 12 examination by Dr. Michael Nogalski of Orthopedic Associates. Petitioner provided a history of his injury and subsequent treatment, reporting that he only underwent one session of therapy recommended by Dr. Miller because no further therapy was authorized. Dr. Nogalski reviewed Petitioner's treatment records. He also reviewed fresh X-rays and the MRI, which he noted showed a Barker's cyst that looked atypical but benign.

Following an examination, Dr. Nogalski's impression was of left knee posterior pain without distinct objective correlation. He opined that the nature and extent of the injury appeared to be a left knee strain. He also noted a possible left knee contusion with resultant posterior knee pain. Dr. Nogalski opined that the claimed February 18, 2022, injury could have caused a knee strain and resultant weakness which has persisted as of Petitioner's April 22, 2023, physical therapy session. He also opined that Petitioner did not seem to have significant

symptoms from his patellofemoral arthritis. He wrote that there were no discrete objective findings to validate hamstring tendinopathy, tendinitis, or capsular injury, but Petitioner's clinical history and symptoms appeared to support this as the main issue in his current condition. Dr. Nogalski did not believe the cyst was pathologic or causing any symptoms. He did not believe the claimed accident aggravated a pre-existing condition. He opined that the treatment to date had been reasonable and necessary. Dr. Nogalski recommended physical therapy but opined that Petitioner could return to full-duty work. He did not believe that Petitioner had reached MMI but would after 6-10 weeks of therapy.

On January 13, 2025, Dr. Nogalski, a board-certified orthopedic surgeon, testified by deposition for Respondent. He generally testified consistently with his report. He added that he could not identify a specific reason to call a change in the left knee, though Petitioner may have had some hamstring tendinopathy or capsular pain which could be related to the fall or strain. He also stated that the mild tilt of the kneecap was a somewhat anatomic orientation which would reasonably cause increased pain.

D. Additional Information

Petitioner testified that he had no left knee pain or treatment prior to the work accident. He also stated that he was working full duty prior to the accident.

Regarding his current condition, Petitioner testified that the pain never goes away but is manageable. He stated that he occasionally has tingling in his leg and tingling in his knee three to four times per week. He also described occasionally swelling in his knee, though not as much as in the period immediately after the accident. He stated that he usually treated the swelling with ice, heat, or Tylenol. Petitioner further described occasional difficulty with range of motion and stiffness in the knee. According to Petitioner, after extreme activity, such as deer hunting, when he is out in the woods and walking on uneven ground or even on the golf course walking on uneven ground, the pain flares up and is more noticeable than it is on a daily basis. He explained that he was an avid deer hunter and his difficulties in hunting affect his ability to feed his family. He added that he did not walk long distances but used a golf cart. However, he stated that he did not have difficulty with his daily activities of living. He further stated that he only took medication as needed.

Petitioner also testified that his condition is sometimes aggravated while working. Petitioner testified that he now worked in the dietary department as a Correctional Food Service Supervisor and there are uneven spots on the kitchen floors where he regularly works which aggravate his pain when he hits them. He stated that his shift is seven and one-half hours long. He testified that he earns more in his current position than his prior position as a Correctional Officer. He also stated that he occasionally experienced the tingling, swelling, and pain after working. He told the Arbitrator that he still has the Baker's cyst because his treaters thought that the risks of surgery outweighed the potential rewards.

II. CONCLUSIONS OF LAW

A. Causal Connection

The Arbitrator found that Petitioner's current condition of ill-being is casually related to the stipulated work accident. In order to obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need only be a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and subsequent injury resulting in a disability" may be sufficient to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982).

The Commission agrees with the Arbitrator's finding of a causal connection. Petitioner testified without rebuttal that he had no left knee pain or treatment prior to the work accident. After the accident, Petitioner consistently reported left knee pain on the posterior aspect of the left knee. Following the September 2022 MRI, Nurse Kamp opined that Petitioner's left knee osteoarthritis was not work-related and Dr. Capecci diagnosed left knee pain with mild patellofemoral arthritis without rendering a causation opinion. However, Petitioner reported to Dr. Miller that he was told he had arthritis in the anterior aspect of the knee, while reporting pain predominantly localized to the posterior aspect and denying anterior knee pain. Dr. Miller's assessment was of left knee patellofemoral osteoarthritis as well as a Baker's cyst, leading to hamstring tendinitis. He noted that the cyst is persistent and indirectly related to the arthritis.

Dr. Nogalski, the Section 12 examiner, diagnosed Petitioner with left knee posterior pain without distinct objective correlation. He opined that the nature and extent of the injury appeared to be a left knee strain which had not reached MMI by June 28, 2023. He also opined that Petitioner did not seem to have significant symptoms from his patellofemoral arthritis and that Petitioner's clinical history and symptoms appeared to support hamstring tendinopathy, tendinitis, or capsular injury as the main issue in his current condition, although Dr. Nogalski found no discrete objective findings. Dr. Nogalski later confirmed in his testimony that Petitioner may have had some hamstring tendinopathy or capsular pain which could be related to the fall or strain.

Based on this record, the Commission concludes that after the accident, Petitioner has suffered from posterior knee pain related to hamstring tendinopathy, tendinitis, or capsular injury which has continued long beyond the period that would be expected for a simple knee strain. Accordingly, the Commission finds that Petitioner's current left knee condition is causally connected to the accident, based on the chain of events and Dr. Nogalski's opinions.

B. Permanent Partial Disability

The Arbitrator ordered Respondent to pay Petitioner permanent partial disability (PPD) benefits representing an 8% loss of the left leg pursuant to Section 8(e) of the Act. Petitioner objects that the award should be modified up to a 10% loss of use of the left leg. Respondent

seeks a modification down to a 2-3% loss of use of the left leg, objects that after the accident, Petitioner completed his shift, never lost time from work, continued to perform full-duty responsibilities without restrictions throughout the course of treatment, and denies impairment regarding his activities of daily living, which significantly undermines any claim of a serious or permanently aggravating injury.

The Commission turns to analyze the statutory factors considered when awarding PPD benefits under the Act. Subsection (b) of section 8.1b of the Act lists five factors upon which the Commission must base its determination, including: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b) (West 2024). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id.* § 305/8.1b(b)(v).

Regarding subsection (i) of Section 8.1b(b), neither party submitted a PPD impairment report. Accordingly, the Commission places no weight on this factor.

Regarding subsection (ii) of Section 8.1b(b), Petitioner has returned to work for Respondent as a Correctional Food Service Supervisor, which appears to be a less active position than his prior position as a Correctional Officer. However, Petitioner testified that there are uneven spots on the kitchen floors where he regularly works which aggravate his pain when he hits them. The Commission places some weight on this factor.

Regarding subsection (iii) of Section 8.1b(b), Petitioner was 41 years old when he suffered the injury to his left knee. Petitioner potentially has decades of remaining work life which is affected by his injury and residual disability. The Commission places greater weight on this factor.

Regarding subsection (iv) of Section 8.1b(b), Petitioner testified that he earns more in his current position than his prior position as a Correctional Officer. He submitted no evidence that his residual disability will otherwise affect his future earnings capacity. The Commission places lesser weight on this factor.

Regarding subsection (v) of Section 8.1b(b), Petitioner testified that his pain never goes away but is manageable. He also described occasional tingling in his leg and knee three to four times per week, as well as swelling, though not as much as in the period immediately after the accident. He further described occasional difficulty with range of motion and stiffness in the knee. Although he treats these symptoms with conservative measures and they do not materially affect his activities of daily living, they affect his ability to walk distances or hunt (and indirectly to feed his family). Petitioner's testimony is generally consistent with the conditions described in the records of Petitioner's physical therapy and rehabilitation sessions at Jacksonville Memorial Hospital. Indeed, Petitioner testified to his surprise at the effectiveness of the dry needling treatment he received. Petitioner's testimony is also consistent with Dr. Nogalski's assessment that Petitioner's clinical history and symptoms appeared to support hamstring tendinopathy, tendinitis, or capsular injury as the main issue in his current condition, although

Dr. Nogalski found no discrete objective findings. Although Petitioner's residual disability is not severe, the Commission gives this factor significant weight.

Considering all of the above factors in the context of the entire record, particularly Petitioner's occupation and his age at the time of injury, the Commission awards Petitioner PPD benefits representing an 8% loss of use of the left leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 15, 2025, is hereby affirmed and adopted with the clarifications and corrections noted above.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner established a causal connection between the February 18, 2022, work accident and the current condition of ill-being of his left knee.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of \$732.25 per week for a total of 17.2 weeks representing an 8% loss of use of the left leg pursuant to Section 8(e)(12) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court remains fixed at the sum of \$12,700.00. 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.

o: 11/5/25
CMD/kcb
045

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

NOVEMBER 12 2025

/s/ Frank J. Soto
Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC014497
Case Name	George Lomelino v. State of Illinois - Illinois Department of Corrections - Jacksonville Correctional Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Alexis Ferracuti
Respondent Attorney	Joseph L. Moore

DATE FILED: 4/15/2025

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

/s/ Edward Lee, Arbitrator
Signature

April 15, 2025



/s/ Michele Kowalski
Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF APRIL 15 2025 4.06%

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**

GEORGE LOMELINOCase # **22WC014497**

v.

IDOC JACKSONVILLE CORRECTIONAL CENTER

Employer/Respondent(s)

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 Lee**, Arbitrator of the Commission, in the city of Springfield on March 25, 2025. After reviewing 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.

FINDINGS:

On **February 18, 2022**, Respondent **was** operating under and subject to the provisions of the Act.
 On these dates, an employee-employer relationship **did** exist between Petitioner and Respondent.
 On this date, Petitioner **did** sustain an injury that arose out of, and in the course of, his 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 63461.92 the average weekly wage was **\$1220.42**.
 On the date of the accident, Petitioner was 41 years of age, and **married** with **three** 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 under Section 8(j).

ORDER:

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF \$732.25 PER WEEK FOR 17.2 WEEKS BECAUSE THE INJURIES SUSTAINED BY PETITIONER CAUSED A LOSS OF 8% OF THE LEFT LEG AS A WHOLE AS PROVIDED IN SECTION 8(E) OF THE ACT RESULTING IN A TOTAL AWARD OF \$12,594.70.

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

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

Edward Lee

Signature of Arbitrator

APRIL 15 2025

STATEMENT OF FACTS

Petitioner has been employed by the Illinois Department of Corrections (IDOC) at the Jacksonville Correctional Center since June 22, 2015, where he initially served as a Correctional Officer. At the time of the incident, he was earning an average weekly wage of \$1,220.40. On February 18, 2022, while working the midnight shift, Petitioner was transitioning from Tower 1 to the dietary post when he slipped and fell on ice and snow while walking toward the main entrance. This incident occurred at approximately 2:30 a.m., while Petitioner was still on duty, on the time clock, and performing his assigned responsibilities. Petitioner was carrying his personal bag over his shoulder at the time and, despite experiencing immediate pain, completed his shift before reporting the incident to his supervisor, Major Jeff Higgins, and completing the required accident report.

Following the accident, Petitioner promptly sought medical care at Midwest Occupational Health Associates (MOHA), where he was evaluated and provided with anti-inflammatory medications, including Tylenol, Naproxen, and Relafen. He was also given a brace to support his injured knee and referred for physical therapy, which he completed at Jacksonville Memorial Hospital. Despite conservative treatment, including 16 sessions of physical therapy and a course of dry needling, Petitioner continued to experience persistent pain, swelling, and mobility issues. Diagnostic imaging, including an MRI performed at Springfield Clinic in September 2022, revealed evidence of patellar tendinitis, hamstring tendinitis, and the presence of a Baker's cyst, all of which contributed to his ongoing symptoms.

Petitioner's treatment was unnecessarily delayed due to a lack of timely authorization from the workers' compensation insurance carrier. Despite multiple follow-up attempts by MOHA to obtain approval for the MRI, the necessary authorization was not granted until September 2022, more than six months after the initial request. The MRI results subsequently confirmed the presence of ongoing pathology contributing to Petitioner's chronic pain and discomfort. Petitioner was later referred to Loyola Medicine in Orland Park for orthopedic evaluation. During his visit in March 2023, Loyola recommended continued physical therapy, dry needling, and the use of over-the-counter NSAIDs to manage his symptoms. Although Petitioner was compliant with all medical recommendations, he continued to experience residual pain and stiffness.

Despite his efforts to mitigate the impact of his injury through treatment and lifestyle adjustments, Petitioner's symptoms remain ongoing. He reports chronic pain, occasional swelling, and stiffness in the affected knee, with these symptoms being aggravated by walking on uneven surfaces or engaging in prolonged physical activity. Petitioner experiences tingling sensations in his knee three to four times per week and occasional

stiffness, particularly after physical exertion or long periods of inactivity. His condition is exacerbated by uneven flooring in the dietary area of the correctional facility where he now works as a Correctional Food Service Supervisor. In his current position, Petitioner spends approximately 7.5 hours per shift in the kitchen, where uneven surfaces aggravate his knee pain and discomfort. Although Petitioner now earns a higher wage in this position, the physical strain and discomfort caused by his knee condition continue to affect his work performance and quality of life.

Petitioner's hobbies, including hunting and golf, have been significantly impacted by his injury. An avid hunter, Petitioner previously spent considerable time in the woods hunting and providing meat for his family, but he is now unable to spend as much time pursuing this activity due to pain and limited mobility. He can no longer physically drag deer from the woods without assistance, forcing him to rely on others or use a side-by-side vehicle to complete these tasks. His ability to engage in these activities, which were an essential part of his family's sustenance and lifestyle, has been drastically reduced. Similarly, walking on uneven ground during outdoor activities, including golfing, exacerbates his pain and limits his ability to fully enjoy these pastimes.

Prior to the incident on February 18, 2022, Petitioner had no history of left knee pain or treatment and was working full duty without restrictions. His post-injury symptoms and ongoing complaints are directly attributable to the work-related fall. The Baker's cyst and ongoing pain were identified only after the accident, establishing a direct causal connection between the workplace injury and Petitioner's current condition. Although he has returned to full-duty work without restrictions, Petitioner continues to manage his symptoms through elevation, heat and ice therapy, and occasional use of over-the-counter pain medication. However, his ongoing complaints, coupled with functional limitations, clearly establish a basis for permanent impairment.

Petitioner has been released from medical care with no future treatment recommended. Nevertheless, his residual symptoms, including persistent pain, occasional swelling, and limitations in mobility, are permanent in nature. Despite his high tolerance for pain, Petitioner's ongoing limitations and functional impairments substantiate the need for an award of permanent partial disability benefits. Under the Illinois Workers' Compensation Act (820 ILCS 305/8), Petitioner is entitled to permanency benefits due to the ongoing nature and extent of his injury, the resulting limitations on his daily living and work activities, and the significant impact on his quality of life.

In conclusion, the evidence presented unequivocally establishes that Petitioner sustained a work-related injury that resulted in permanent impairment, warranting an award of permanency benefits. Petitioner's diligent compliance with treatment, continued

work performance despite chronic pain, and ongoing physical limitations support a finding of permanent partial disability under the Illinois Workers' Compensation Act.

CAUSATION

Petitioner, George Lomelino, has demonstrated by clear and convincing evidence that his ongoing symptoms are directly related to the work injury he sustained on February 18, 2022, while employed at the Illinois Department of Corrections (IDOC). The medical evidence, lack of any prior history of knee-related complaints, and Petitioner's consistent and credible testimony establish a direct causal connection between the original injury and his continuing impairments. Under Illinois law, a petitioner is entitled to compensation if the work-related injury is a "proximate cause" of the current condition, and the evidence in this case clearly supports that Petitioner's ongoing knee symptoms are a direct consequence of his workplace accident.

Prior to the work injury, Petitioner had no history of left knee pain, injury, or medical treatment. He credibly testified that he had never experienced any pain, swelling, or mobility limitations in his left knee before the incident. He was working full duty without restrictions as a Correctional Officer at the Jacksonville Correctional Center, performing his physically demanding job duties, which required walking, standing, and patrolling for extended periods. The complete absence of any prior knee complaints before the accident, combined with the immediate onset of pain and swelling following the fall on the icy walkway, establishes a clear baseline of normalcy prior to the work-related trauma. This lack of any prior knee issues underscores the conclusion that Petitioner's current symptoms are entirely attributable to the work injury. Illinois case law supports this conclusion. It is well-established that a petitioner need not prove that the work-related injury was the sole cause of the condition of ill-being but only that it was a causative factor contributing to the injury. As stated in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989), "It is sufficient to show that the employee's work was a causative factor that aggravated or accelerated the injury or condition." Similarly, in *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003), the Illinois Supreme Court emphasized that an employer is liable when a work injury aggravates or accelerates a pre-existing condition or combines with it to produce disability. Since Petitioner had no pre-existing condition or prior history of left knee complaints, the causal connection between his current symptoms and the work-related fall is even more compelling.

The mechanism of injury described by Petitioner is entirely consistent with the nature of his current symptoms. On February 18, 2022, Petitioner slipped and fell on ice while walking between his assigned posts during his midnight shift while on the Respondent's timeclock. As confirmed in his testimony, the fall caused an immediate

injury to his left knee, resulting in severe pain, swelling of double the size in his left knee, and limited mobility. Petitioner reported the injury to his supervisor, Major Jeff Higgins, the same day and completed an accident report as required. His immediate reporting of the incident and his seeking medical attention the following day demonstrate the severity of the injury and the fact that it was directly related to his work duties. Illinois courts have repeatedly recognized that when the injury results from an accident arising out of and in the course of employment, the employer is responsible for the resulting condition. In *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981), the court held that “an injury arises out of employment when there is a causal connection between the injury and the work performed by the employee.” Petitioner’s fall while walking between assigned posts during his midnight shift falls squarely within the definition of an accident arising out of and in the course of his employment.

The MRI performed at Springfield Clinic in September 2022 revealed objective findings consistent with Petitioner’s ongoing symptoms. The imaging confirmed the presence of patellar tendinitis, hamstring tendinitis, and a Baker’s cyst, all of which were absent prior to the work-related fall. These findings substantiate Petitioner’s subjective complaints of pain, stiffness, and swelling and further support the conclusion that the ongoing symptoms are causally related to the original injury. The Illinois Appellate Court has consistently held that objective medical evidence supporting a petitioner’s complaints strengthens the causal relationship between the work injury and the resulting condition. In *Stone v. Industrial Comm'n*, 361 Ill. App. 3d 716, 722 (4th Dist. 2005), the court held that medical imaging demonstrating pathology consistent with the petitioner’s complaints is strong evidence of a causal connection. Likewise, in *ArcelorMittal Steel v. Illinois Workers' Comp. Comm'n*, 2011 IL App (1st) 102180WC, the court affirmed the Commission’s decision finding a causal relationship where diagnostic imaging confirmed findings consistent with the work-related trauma.

Although Petitioner’s medical care was unnecessarily delayed due to the failure of the workers' compensation insurance carrier to approve the MRI in a timely manner, this delay does not break the chain of causation. Petitioner diligently followed up with MOHA multiple times to inquire about the status of the MRI authorization, yet it took more than six months for the necessary approval to be granted. During this time, Petitioner’s condition worsened due to the lack of timely diagnostic evaluation and intervention. The delay in treatment caused by the insurance carrier does not diminish the fact that Petitioner’s ongoing symptoms stem from the original work-related injury, nor does it sever the causal link between the injury and his current condition. Illinois courts have held that a delay in treatment caused by the employer or its insurance carrier does not sever the causal relationship between the original injury and the resulting condition of ill-being. In *Fitts v.*

Industrial Comm'n, 172 Ill. App. 3d 803, 808 (1st Dist. 1988), the court held that the employer remains liable when a delay in medical treatment exacerbates or prolongs the effects of the original injury. Similarly, in *Zitzka v. Industrial Comm'n*, 328 Ill. App. 3d 844, 852 (2d Dist. 2002), the court affirmed that a delay in receiving appropriate medical care due to the actions of the employer does not negate the causal connection between the injury and the petitioner's condition.

Petitioner's continued symptoms prompted a referral to Loyola Medicine in Orland Park, where he was evaluated by orthopedic specialists. Despite undergoing additional physical therapy and receiving an injection to manage inflammation, Petitioner continues to experience residual pain, swelling, and stiffness in his left knee. The orthopedic evaluation confirmed that these ongoing symptoms were attributable to the original injury and recommended continued use of nonsteroidal anti-inflammatory drugs (NSAIDs) as needed to manage the persistent pain and inflammation. In *Chicago Park District v. Industrial Comm'n*, 263 Ill. App. 3d 835, 843 (1st Dist. 1994), the court reaffirmed that where medical evidence and expert opinions establish a continuing link between the original injury and the petitioner's current condition, causation remains intact. The opinions of the treating physicians and orthopedic specialists who evaluated Petitioner support the conclusion that his ongoing symptoms are directly related to the work injury.

Petitioner's testimony was clear, consistent, and credible. He testified that his symptoms began immediately after the fall, worsened over time, and persisted despite exhaustive medical treatment. He described how his condition impacts his work at IDOC, where he now serves as a Correctional Food Service Supervisor and spends 7.5 hours per shift in the dietary area, where uneven surfaces aggravate his knee pain. Petitioner also described how his injury has negatively affected his ability to engage in his favorite hobbies, such as hunting and golfing, which involve traversing uneven terrain that exacerbates his pain and stiffness. Illinois law holds that a petitioner's testimony, when credible and corroborated by medical evidence, is sufficient to establish a causal connection. In *Eidson v. Industrial Comm'n*, 187 Ill. App. 3d 826, 832 (4th Dist. 1989), the court noted that the testimony of the injured employee regarding the onset and progression of symptoms, when consistent with medical evidence, is adequate to establish causation.

Although Petitioner was not diagnosed with a Baker's cyst until after the work injury, the development of this condition is a well-known consequence of chronic inflammation and joint instability following knee trauma. Petitioner credibly testified that he had no pain or symptoms in the affected area before the work injury, and the cyst was not detected until after the initial trauma. Under Illinois law, the aggravation or acceleration of a pre-existing condition—or the development of a new condition as a result of a work injury—

renders the employer liable for the resulting disability. In *County of Cook v. Industrial Comm'n*, 69 Ill. 2d 10, 17 (1977), the court held that an employer remains liable where a work-related injury aggravates or accelerates a pre-existing condition or leads to the development of new pathology. Since Petitioner's Baker's cyst and ongoing symptoms arose only after the initial trauma, the connection between the injury and his current condition is firmly established.

In sum, the evidence presented in this case overwhelmingly supports the conclusion that Petitioner's ongoing symptoms are causally related to his work injury on February 18, 2022. Petitioner's lack of prior medical history, the immediate onset of symptoms following the fall, the consistency between the mechanism of injury and his ongoing complaints, the findings of objective diagnostic imaging, and the corroboration of his symptoms by orthopedic specialists establish a clear and unbroken chain of causation. Petitioner's ongoing impairments are a direct consequence of his work-related trauma, and he is entitled to permanency benefits under the Illinois Workers' Compensation Act. The Commission should therefore enter a decision finding that Petitioner's current condition of ill-being is causally related to the original work injury and award him the appropriate level of permanency benefits.

Petitioner, George Lomelino, respectfully requests that the Illinois Workers' Compensation Commission award permanency benefits pursuant to the Illinois Workers' Compensation Act (820 ILCS 305/8), based on the nature and extent of his work-related injury and its ongoing impact on his life, employment, and daily activities. The evidence establishes that Petitioner sustained a compensable injury to his left knee on February 18, 2022, while performing his duties as a Correctional Officer at the Jacksonville Correctional Center. Despite extensive medical treatment and rehabilitation, Petitioner continues to experience ongoing pain, reduced functionality, and permanent physical limitations that warrant an award of permanent partial disability (PPD) benefits.

The nature of Petitioner's injury and its impact on his body clearly supports a finding of permanent impairment. On the date of the accident, Petitioner slipped and fell on ice while transitioning between assigned posts during his midnight shift. He sustained an immediate injury to his left knee, resulting in significant pain, swelling, and restricted mobility. He reported the injury to his supervisor, Major Jeff Higgins, and completed an accident report the same day. Petitioner sought medical attention at Midwest Occupational Health Associates (MOHA) the following day, where he was prescribed anti-inflammatory medications, provided with a knee brace, and referred for physical therapy. Despite undergoing conservative treatment, including 16 sessions of physical therapy and dry needling at Jacksonville Memorial Hospital, Petitioner continued to experience

persistent symptoms. An MRI performed at Springfield Clinic in September 2022 revealed objective findings consistent with his ongoing complaints, including patellar tendinitis, hamstring tendinitis, and a Baker's cyst. These findings confirm the nature and extent of Petitioner's injury and its ongoing effect on his physical condition.

The extent of Petitioner's permanent impairment is further demonstrated by his reduced range of motion, ongoing pain, and swelling, all of which have persisted despite reaching maximum medical improvement (MMI). Petitioner testified that he continues to experience chronic pain and stiffness in his left knee, particularly after prolonged standing or walking on uneven surfaces. His symptoms are aggravated by uneven flooring in the dietary department where he now works as a Correctional Food Service Supervisor, spending 7.5 hours per shift on his feet. The presence of the Baker's cyst, which has not resolved, contributes to intermittent swelling and discomfort. While Petitioner has been released from medical care with no future treatment recommended, Illinois law recognizes that the absence of future treatment does not negate the existence of a permanent impairment. As held in *National Freight Industries v. Illinois Workers' Comp. Comm'n*, 2013 IL App (3d) 120043WC, a petitioner may have reached MMI while still suffering from residual symptoms and functional limitations that justify an award of permanency benefits.

Petitioner's ongoing functional limitations have resulted in a measurable reduction in his ability to perform daily activities and recreational pursuits. Although Petitioner has returned to work in a higher-paying position, his ability to perform physical tasks has been significantly compromised. He continues to experience pain and discomfort during his work in the dietary department, where he is regularly exposed to uneven surfaces that aggravate his knee condition. In addition, Petitioner's ability to engage in his hobbies, including hunting and golfing, has been greatly diminished. Petitioner, an avid hunter, previously provided a significant portion of his family's meat through hunting, but now struggles to walk long distances in the woods and is physically unable to drag deer without assistance. This loss of enjoyment and the inability to fully participate in these meaningful activities has had a profound impact on his quality of life. Illinois law recognizes that the loss of the ability to engage in meaningful recreational activities contributes to the determination of whether an award of permanency benefits is appropriate, as established in *Oscar Mayer & Co. v. Industrial Comm'n*, 79 Ill. 2d 254 (1980).

The petitioner's age and future earning capacity also support an award of permanency benefits. Petitioner was born on July 2, 1980, making him 44 years old at the time of the arbitration hearing. Given his age and the physically demanding nature of his position, Petitioner's ongoing knee condition places him at an increased risk of future complications and may limit his ability to continue performing physically intensive tasks as

he ages. Although Petitioner's current position as a Correctional Food Service Supervisor pays a higher wage, the lingering effects of his injury reduce his ability to perform tasks that involve prolonged standing, walking, or navigating uneven surfaces. Illinois courts have held that a petitioner is entitled to permanency benefits even when earning a higher wage if the injury limits their ability to perform certain job functions or affects their future earning potential, as reaffirmed in *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 519 (2006). Petitioner's ongoing physical limitations may restrict his ability to advance within his career or transition to other positions that require greater physical exertion.

Finally, the medical evidence, coupled with Petitioner's credible and consistent testimony, demonstrates that he has suffered a loss of the person as a whole under Section 8(d)(2) of the Illinois Workers' Compensation Act (820 ILCS 305/8(d)(2)). The MRI results, combined with Petitioner's ongoing symptoms and the continued presence of the Baker's cyst, confirm that Petitioner's condition of ill-being is permanent in nature. His persistent pain, reduced mobility, and inability to engage fully in recreational activities and physically demanding work functions support a finding of permanent partial disability. Petitioner's testimony regarding his ongoing pain, limitations at work, and inability to engage in previous hobbies was consistent with the medical evidence and fully supports his claim for permanency benefits.

In conclusion, the evidence presented demonstrates that Petitioner has sustained a permanent impairment resulting from his work-related injury that warrants an award of permanency benefits under the Illinois Workers' Compensation Act. Petitioner's ongoing pain, functional limitations, and reduced ability to engage in work and recreational activities establish a clear basis for a finding of permanent partial disability. Given the severity and duration of Petitioner's condition, along with the objective medical findings and corroborating testimony, the Commission should award Petitioner an appropriate level of permanency benefits to compensate for his ongoing impairment and the resulting impact on his work and quality of life.

PERMANENCY BENEFITS

Petitioner, George Lomelino, respectfully requests that the Illinois Workers' Compensation Commission award permanency benefits pursuant to the Illinois Workers' Compensation Act (820 ILCS 305/8), based on the nature and extent of his work-related injury and its ongoing impact on his life, employment, and daily activities. The evidence establishes that Petitioner sustained a compensable injury to his left knee on February 18, 2022, while performing his duties as a Correctional Officer at the Jacksonville Correctional Center. Despite extensive medical treatment and rehabilitation, Petitioner continues to

experience ongoing pain, reduced functionality, and permanent physical limitations that warrant an award of permanent partial disability (PPD) benefits.

The nature of Petitioner's injury and its impact on his body clearly supports a finding of permanent impairment. On the date of the accident, Petitioner slipped and fell on ice while transitioning between assigned posts during his midnight shift. He sustained an immediate injury to his left knee, resulting in significant pain, swelling, and restricted mobility. He reported the injury to his supervisor, Major Jeff Higgins, and completed an accident report the same day. Petitioner sought medical attention at Midwest Occupational Health Associates (MOHA) the following day, where he was prescribed anti-inflammatory medications, provided with a knee brace, and referred for physical therapy. Despite undergoing conservative treatment, including 16 sessions of physical therapy and dry needling at Jacksonville Memorial Hospital, Petitioner continued to experience persistent symptoms. An MRI performed at Springfield Clinic in September 2022 revealed objective findings consistent with his ongoing complaints, including patellar tendinitis, hamstring tendinitis, and a Baker's cyst. These findings confirm the nature and extent of Petitioner's injury and its ongoing effect on his physical condition.

The extent of Petitioner's permanent impairment is further demonstrated by his reduced range of motion, ongoing pain, and swelling, all of which have persisted despite reaching maximum medical improvement (MMI). Petitioner testified that he continues to experience chronic pain and stiffness in his left knee, particularly after prolonged standing or walking on uneven surfaces. His symptoms are aggravated by uneven flooring in the dietary department where he now works as a Correctional Food Service Supervisor, spending 7.5 hours per shift on his feet. The presence of the Baker's cyst, which has not resolved, contributes to intermittent swelling and discomfort. While Petitioner has been released from medical care with no future treatment recommended, Illinois law recognizes that the absence of future treatment does not negate the existence of a permanent impairment. As held in *National Freight Industries v. Illinois Workers' Comp. Comm'n*, 2013 IL App (3d) 120043WC, a petitioner may have reached MMI while still suffering from residual symptoms and functional limitations that justify an award of permanency benefits.

Petitioner's ongoing functional limitations have resulted in a measurable reduction in his ability to perform daily activities and recreational pursuits. Although Petitioner has returned to work in a higher-paying position, his ability to perform physical tasks has been significantly compromised. He continues to experience pain and discomfort during his work in the dietary department, where he is regularly exposed to uneven surfaces that aggravate his knee condition. In addition, Petitioner's ability to engage in his hobbies, including hunting and golfing, has been greatly diminished. Petitioner, an avid hunter,

previously provided a significant portion of his family's meat through hunting, but now struggles to walk long distances in the woods and is physically unable to drag deer without assistance. This loss of enjoyment and the inability to fully participate in these meaningful activities has had a profound impact on his quality of life. Illinois law recognizes that the loss of the ability to engage in meaningful recreational activities contributes to the determination of whether an award of permanency benefits is appropriate, as established in *Oscar Mayer & Co. v. Industrial Comm'n*, 79 Ill. 2d 254 (1980).

The petitioner's age and future earning capacity also support an award of permanency benefits. Petitioner was born on July 2, 1980, making him 44 years old at the time of the arbitration hearing. Given his age and the physically demanding nature of his position, Petitioner's ongoing knee condition places him at an increased risk of future complications and may limit his ability to continue performing physically intensive tasks as he ages. Although Petitioner's current position as a Correctional Food Service Supervisor pays a higher wage, the lingering effects of his injury reduce his ability to perform tasks that involve prolonged standing, walking, or navigating uneven surfaces. Illinois courts have held that a petitioner is entitled to permanency benefits even when earning a higher wage if the injury limits their ability to perform certain job functions or affects their future earning potential, as reaffirmed in *Cassens Transport Co. v. Industrial Comm'n*, 218 Ill. 2d 519 (2006). Petitioner's ongoing physical limitations may restrict his ability to advance within his career or transition to other positions that require greater physical exertion.

Finally, the medical evidence, coupled with Petitioner's credible and consistent testimony, demonstrates that he has suffered a loss of the person as a whole under Section 8(d)(2) of the Illinois Workers' Compensation Act (820 ILCS 305/8(d)(2)). The MRI results, combined with Petitioner's ongoing symptoms and the continued presence of the Baker's cyst, confirm that Petitioner's condition of ill-being is permanent in nature. His persistent pain, reduced mobility, and inability to engage fully in recreational activities and physically demanding work functions support a finding of permanent partial disability. Petitioner's testimony regarding his ongoing pain, limitations at work, and inability to engage in previous hobbies was consistent with the medical evidence and fully supports his claim for permanency benefits.

In conclusion, the evidence presented demonstrates that Petitioner has sustained a permanent impairment resulting from his work-related injury that warrants an award of permanency benefits under the Illinois Workers' Compensation Act. Petitioner's ongoing pain, functional limitations, and reduced ability to engage in work and recreational activities establish a clear basis for a finding of permanent partial disability of 8% loss of use of the left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023058
Case Name	Aaron Balcaen v. Miller Trucking & Excavating
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0451
Number of Pages of Decision	33
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Howard Zimmerle
Respondent Attorney	R Mark Cosimini

DATE FILED: 11/13/2025

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF MCLEAN)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AARON BALCAEN,

Petitioner,

vs.

NO: 23 WC 23058

MILLER TRUCKING & EXCAVATING,

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 whether Petitioner's right leg condition is causally related to his April 15, 2021 accident, entitlement to incurred medical expenses, and the nature and extent of Petitioner's 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 April 1, 2025 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses detailed in Petitioner's Exhibits 16, 17, 18, 19, and 20, as provided in §8(a), subject to §8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid as set forth in Respondent's Exhibit 2.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$688.59 per week for a period of 215 weeks, as provided in §8(e)12 of the Act, for the reason that the injuries sustained caused the 100% loss of use of the right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$688.59 per week for a period of 200 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 40% loss of use of the person as a whole (loss of trade).

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

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

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

November 13, 2025

RAW/mck

/s/ Raychel A. Wesley

O: 11/5/25

/s/ Carolyn M. Doherty

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/s/ Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023058
Case Name	Aaron Balcaen v. Miller Trucking & Excavating
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	30
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Howard Zimmerle
Respondent Attorney	R Mark Cosimini

DATE FILED: 4/1/2025

/s/ Dennis OBrien, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 1 2025 4.07%

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

AARON BALCAEN

Employee/Petitioner

v.

MILLER TRUCKING AND EXCAVATING

Employer/Respondent

Case # **23** WC **023058**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Dennis O'Brien**, Arbitrator of the Commission, in the city of **Bloomington**, on **January 30, 2025**. 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 15, 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.

In the year preceding the injury, Petitioner earned **\$59,667.80**; the average weekly wage was **\$1,147.65**.

On the date of accident, Petitioner was **45** years of age, *married* with **1** dependent child.

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

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

Respondent shall be given a credit for all temporary total disability having been paid, per the stipulation of the parties.

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

ORDER

Petitioner's medical conditions, burst fracture of the L1 vertebrae, trauma to the spinal cord and canal, spinal fusion from T10 through L3, right thigh muscle loss, right fibular fracture and deltoid ligament injury, resulting in a right below-knee amputation, are causally related to the accident of April 15, 2021.

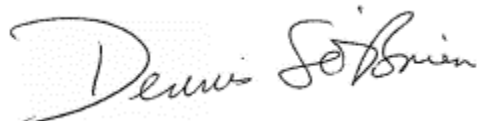
All of the bills introduced into evidence in Petitioner's Exhibits 16, 17, 18, 19, and 20 are related to Petitioner's spinal and right leg injuries suffered as a result of the April 15, 2021 accident, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident, and are to be paid pursuant to Sections 8(a) and 8.2 of the Act.

Respondent is entitled to credit for all amounts it has paid on said bills as shown in Respondent Exhibit 2.

Petitioner sustained permanent partial disability to the extent of 100% loss of use of the right leg (215 weeks) pursuant to §8(e) of the Act. Petitioner is further awarded 40% of the person (an additional 200 weeks) for loss of trade due to permanent restrictions.

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.



APRIL 1 2025

Signature of Arbitrator

Aaron Balcaen vs. Miller Trucking & Excavating 23 WC 023058

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified he graduated from United Township High School in 1994, and subsequently earned an associates degree in liberal arts from Heartland Community College. He said he had no other degrees or education outside of work-related training. (TR p. 17,18)

Petitioner said that after college, he went to work for his father's construction business, framing and building houses and room additions. He said that for that company he performed the trades that go along with building houses, framing and concrete work. He next worked as a laborer and as an operator of mini-excavators for Quad City Directional Boring for five years, traveling and performing trench work for utilities. (TR p. 18-20)

In 2004, Petitioner began working for Respondent, becoming a member of the local laborers union. He worked exclusively for Respondent from 2004 until his accident of April 15, 2021. He said he was still a dues paying member of that union. (TR p. 19-21)

Petitioner testified that the work he did for Respondent was as a pipe setter, that he set pipes, including water mains, sewers and storm sewers. He noted that some pipes could be 60 to 72 inches in diameter. He said he was mainly the pipe setter down in the hole or trench assembling pipes, insuring the pipes were lined up correctly, at the correct angle/grade, and would not leak. He said he would not be the person excavating the trench, he was the person doing the shovel work, laboring in the trench. The trim work would result in telephone, cable, water and power lines being safely exposed, using various shovels and hand tools, work the excavating machinery could not do. He said his work would often involve the use of concrete saws and electric drills, and he often worked on very uneven and wet, muddy ground. He said hie would often have to jackhammer rock to continue the excavation. He said his work involved very heavy lifting and exposure to all weather conditions. (TR p. 21,25-29,32-35)

Petitioner explained that the trenches he worked in would commonly be 28 to 30 feet deep, but could be as deep as 49 feet, and that he would have to climb in and out with a ladder. He said when doing repair work, he would sometimes be dropped down through manholes with a harness, and he would sometimes jackhammer the old concrete floor out, remove it, and then replace it by laying new concrete or repairing the existing concrete. He said while doing that work you had to remain hooked up to the surface via your harness as it was necessary on occasion to remove the worker due to lack of oxygen. (TR p. 29-30,35)

He testified that in addition to the pipe work, there was also finish work involved to be performed, putting back driveways or sidewalks that had been excavated, and replacing lawns or dirt. Petitioner said Respondent also did snowplowing for John Deere, which Petitioner performed at times. He testified that none of

his work for Respondent involved the use of a computer, that he had never used a computer in his life. (TR p. 36,38)

Petitioner testified that the water mains they installed involved the same type of work, but it was much shallower, with a lot more assembly of parts, a lot more bolting, wrenching, etc. He noted that the work often could not be do in a standing position. (TR p.37,38)

Petitioner said that he had suffered a low back problem in 2008, he had back pain for about six months, he thought it would get better, but he eventually had surgery, with a couple of rods and six screws put in. He said that as a result of that problem, and possibly his waiting too long, he suffered from a drop foot in his left foot. He explained that the main symptom of the drop foot was loss of muscle, and clumsiness with that foot. He said he was still able to do his normal job between 2008 and the date of this accident. (TR p. 38-40)

Petitioner testified that on April 15, 2021, they were working a project at Arsenal Island, which had an old well water system but was being hooked up to a regular water system. They had worked the project for two or three months and were performing the last step of the project, tearing down a garage sized building about 20 by 30 feet in size, which was made of heavy material. They were loading the torn down material from this well house onto a dump truck, and he could hear an air leak coming from the dump truck, which could be from several different things, so he told the operator who was ready to load the truck so he could check the truck. He said the operator indicated agreement. Petitioner said he bent underneath the truck, and reached underneath the truck, trying to diagnose where the leak was coming from, when he heard the excavator, at which point he looked back and yelled, but the operator lost the load and it was dropped on Petitioner. (TR p.41-43)

Petitioner said the excavator bucket, which was about the size of the table in the hearing room, had been loaded with a lot of material, including an I-beam, and the I-beam hit him, though he was unconscious and could not say exactly what hit him, but it broke his back in multiple places, as well as his hip. (TR p.43)

Petitioner said he was taken to a hospital in the Quad Cities, and he was then rushed to Iowa City by ambulance. He said he had back surgery at Iowa City before he was really aware of what was going on, saying he woke up after the surgery was over. He said he was in that hospital for eight or nine days, at which point he was moved to a rehabilitation facility in the Quad Cities. He said he had to relearn how to walk, as his legs did not work, and he was taught while using cables attached to the ceiling to bear his weight. He knew he was at the rehabilitation facility for a long time. HE said he was eventually released from that facility, a bed and special recliner were taken to his home, and a ramp placed in front of his home. He used a walker and later, a cane, which he continued to use as of the date of arbitration, though he said he had not used it to come into the hearing room for the arbitration. He said he continued to use it when going up more than five steps if there was no railing. (TR p.46-48)

Petitioner testified that after his release from the rehabilitation facility, but prior to his subsequent fall, he had a problem with his hip, which he said had never been addressed, and there was a divot in his leg muscle. He said the divot was in his right thigh, where his pocket would be. Petitioner, at the request of the Arbitrator, lowered his pants to show his right thigh area. The Arbitrator described the right thigh as having a depression about five inches long on the lateral thigh starting about five or six inches below the hip. He noted it was readily visible with a depression of approximately half an inch. It was noted this was not from a laceration or wound, as

there was no scar in the area. Counsel for Petitioner and Respondent agreed with that description. Petitioner said that while hospitalized there was a severe bruise in that area. (TR p.51-53)

Petitioner said he continued to have back pain after his release from the rehabilitation facility, and the back pain had not stopped as of the date of arbitration. He said he also had nerve pain in the legs, numbness, tingling, pins and needles. He said that since the time of this accident had had suffered from erectile dysfunction. Petitioner said when he tried to stretch his legs or put weight on it, the nerve pain “would get crazy,” and he could not feel his feet at all, as he had numbness from the shins down. He said he had not been able to feel his toes since the time of the accident. He said his right leg was weak, he could not control the right ankle, and it would give out. He said he had difficulty controlling his left ankle for other reasons. He said the University of Iowa medical records pain diagrams in Petitioner’s Exhibit 8 had been filled out by him, including the words on those forms. (TR p.54-58)

Petitioner was then questioned about an incident which occurred on December 8, 2021, about eight months following this incident. He said it was a nice day, and he had walked out onto his deck, using his cane. He said there were steps going down to a landing, and then there was a patio outside his walkout basement. He thought he could get down there, so he held onto some lattice on the side of his deck. He went down a slight grade, using his cane, taking short steps, leading with his left leg. He said he lost his balance after he left the lattice, and could not control his legs or feet. He said that at the bottom of the slope there was a nine inch step where the grass and a small retaining wall met, where, while trying to catch his balance, he stepped down, onto his right foot, at which point he broke his foot. He identified Petitioner Exhibit 24 as a photo he took the day before the hearing of the location where he took that step. He said he did not know exactly where in the photo he actually stepped from, but it was above what was seen in the photograph, down to the ground level concrete at the bottom of the photograph. (TR p.58-66)

Petitioner testified that as a result of this action he broke his right foot, He said he crawled up to his house, got in a chair and iced the foot. He said he knew something was wrong with the foot, but he did not seek any treatment that day, as it did not really hurt very much. He said that later in the day it began to swell more, and turn black, but he had a pre-scheduled appointment with his orthopedist, Dr. Pugely, at 8 a.m. the next morning, and at that time he told him of his ankle and foot injury. He said Dr. Pugely determined it was broken, but did not perform surgery on the foot. He said he was placed in an air cast or a boot, and was referred to a different University of Iowa physician, Dr. Femino. (TR p.69-72)

Petitioner said Dr. Femino eventually performed surgery on his foot, placing a halo structure of external metal bars joined together on his foot and leg. He said this was a large apparatus. He said that following a post-operative healing period with the halo, he then had physical therapy. He said afterwards he had pain, and the deformity of the ankle was obvious. He said he could not put weight on the inside of his right ankle, it was buckled inward, with the medial side of the foot towards the floor, and the lateral portion of the foot pointing up into the air. He said after the physical therapy he was still having pain in the right ankle and foot, and he discussed this several times with Dr. Femino. He said he mentioned possible amputation to Dr. Femino, and Petitioner said a below knee amputation was, in his opinion, the best option. Petitioner said that after the amputation the pain still did not go away. He said that prior to this accident he had been a very active outdoorsman, hunting, fishing, playing softball, and playing with is kids. He said it was ten months, from May

of 2023 until March of 2024, after the amputation that he was able to get a prosthetic for his leg, due to an infection and his union health benefits running out while they were dealing with the infection. He said the prosthetic was eventually paid for by Medicare. Several fittings were necessary for the prosthetic to get a good fit. (TR p.72-80)

Petitioner said that from the date of surgery until he received the prosthetic he would get around for about eight months by crawling or using a four wheel scooter. It had handlebars and he would kick using his left foot. Petitioner said that as of the date of arbitration he had learned how to walk with his prosthetic, that he was comfortable walking on flat surfaces, but needed a railing or cane to go up more than a couple of steps. He said he was able to walk on flat surfaces without the use of a cane. He said he no longer used a walker, though he did use a shower chair. (TR p.80-83)

Petitioner testified that he received vocational rehabilitation prior to the amputation and during the period prior to his getting the prosthetic. In regard to his vocational rehabilitation, he said he was in no shape to return to work, that the system his counselor, Karen Kane-Thaler, wanted him to do he was not very educated at, and he got irritated trying to do what she told him to do. He said he did not even know how he would go to work at that point. He said he currently drove using his left foot, taking his prosthetic off when he gets into his truck, as he could not operate the gas pedal with the prosthetic. (TR p.83-85)

Petitioner said that before he did vocational rehabilitation he had never owned a computer. He had used a computer to write a couple of papers while he was in college, though he had trouble writing with it in 1997. He said he had never been an email user. During vocational rehabilitation he got computer training, online, by going to the library, which required him to find rides, as he was not driving then. He said he did not own a computer, and he was not going to buy one. He said he was given an iPad by Respondent to help him pass time, but he did not use it, he did not know how to use it. He said he spoke to Ms. Kane-Thaler on the phone, and she did not know how to turn it on, nor could his girlfriend. (TR p.85-87)

Petitioner testified that after the accident, but before the amputation, he was very hesitant to look for jobs, as he was immobile and in so much pain. He said looking for jobs crossed his mind after the amputation, but he was in physical therapy and still getting doctor tests. He said his pain at that time was like it was on the date of arbitration. He said he was also busy due to his father dying during this period of time. (TR p.87-89)

Petitioner said that during the vocational rehabilitation process he did apply for several jobs. He said a friend who worked at a golf course thought he might be able to get him a job there, but that did not work out as he was in pain at that time and was "going through a lot of stuff." He said those kind of jobs also did not pay very well. He said those jobs were still there as of the date of arbitration if he thought he could handle them, but he did not know if he could. He said he had not worked since the April 2021 accident. He said he did not feel he would be able to go back to doing his old job. (TR p.89-90,98)

Petitioner testified that as of the date of arbitration his neck continued to hurt, though he did not know the cause of that, and his back, with all of the hardware in it, still hurt. He said his hip kept him from straightening out his leg, and when he tried to stretch, he would get nerve pain from his stump all the way to his neck. He said the pain was mainly in his right leg, with numbness in his left leg. He said the amputation absolutely improved his pain level. He felt he was much better off with the prosthetic than with the injured leg. He said his numbness was mainly in his left foot, but he had pins and needles in his right leg when he tried to

straighten it out. He said he could not move his toes since the time of his left foot since the time of the injury, but he did not know if that was part of the numbness. He said he had been able to move the left foot toes after he had left drop foot, before this accident, but it seemed it was after the steel beam fell on him that the inability to move his toes began. (TR p.90-93)

Petitioner said as of the date of arbitration he was only seeing his family physician and getting checkups for the prosthesis. He said he was not going to go to the Iowa City doctors just because of a little pain, as he was in pain all of the time. He said he suffered from erectile dysfunction. He said there were a lot of things he could no longer do the way he wanted to do them, or without the help of his boys, but he could crawl around to pick weeds, as he could not bend over. He said he had trouble doing everything. He said he was able to mow the lawn, as he had a small yard, and the lightest mower he could get. He said he would do 30 to 40 feet, two passes, and then sit on the porch for 10 minutes and do two more passes. The limiting factor was weakness of the left leg, the prosthesis, and neck and back pain. He said it took him about all day to do it. He said he could not carry heavy items. (TR p.93-96)

As for hobbies, Petitioner said he made a little bit of jewelry for friends, tied knots, and sharpened knives for tons of outdoors people. He said he would do the dishes, sitting on a stool, He said he still tried to hunt and fish. He had gone on a hunting trip to Colorado the year before the arbitration, but he stayed at the camp while his friends went out hunting elk. He said he had hunted deer the year prior to arbitration, after having not hunted for two or three years prior to that. He sat in a ground blind about 100 to 150 feet from where he parked his truck, sitting there from sun up to sun down for a couple of days. He said he shot a big deer this year, but others had to track it and bring it back. As for fishing, he could not take his boat out alone, as he could not hook the boat up, but he had been in it, fishing, with his son helping him. He said he could no longer stand up in the boat. He said he used to participate in bass tournaments, but he no longer did that. He said he could sit in a chair and fish from a dock. He said he used a step ladder to climb into the boat, and his son helps him get out. (TR p.97-102)

When asked if he would be open to looking for work, or getting a job, if one within his restrictions and pain level were available, Petitioner said he was "still pondering," "still tossing that around," "I'm on disability right now," "I'm just going to see what happens." (TR p.102-103)

On cross-examination Petitioner testified that prior to this accident he suffered from drop foot of the left foot, saying he fought through it every day, and was clumsy, but with his powerful right leg he could work with it. He said he had lost the muscle in the left calf, but the only thing he could not do was shift a motorcycle. He said a drop foot brace had been prescribed for him in 2008 or so, and he used it for a year-and-a-half to two years. He said it kept the foot flexed at all times, with the toes pointed upward so that when he walked the heel would hit first and he would not drag his toes in front of him. He said he stopped using it, and when doing manual labor it seemed to get a little bit better. He said that before this accident the left foot had been numb since developing drop foot, but he could always feel the area in the front of the left leg from below the knee to the ankle area, the numbness was limited to the top of his left foot. (TR p.103-107)

Petitioner said he had nerve pain which was like a lightning bolt, it would come out of nowhere and last three to four seconds. He said this would happen a couple of times per hour when he moved it wrong, but since he had been sitting during the hearing, it had not occurred. He said he had weakness not only of his left foot, but

of the muscles of the leg, limiting his going up stairs. He said he could not get off the ground without leaning on something, that the muscles in his left leg had deteriorated. (TR p.107-108)

Petitioner said there were no outside steps leading to the basement area. He said the medical history that said he tripped over a retaining wall was actually his losing his step. He said when he started to slip in the grass he probably slipped on the river rock shown in the photo, which was to make the area look pretty. He said he was not getting around well in the time prior to his breaking his ankle, he was getting around better at the time of the arbitration than he had been prior to breaking his ankle, that prior to breaking his ankle he was prevented from walking well as his legs were still very weak, despite having gone through physical therapy, and they would spasm. He said this was his hip, and his legs were not working well. (TR p.109-113)

Petitioner said that as of the date of arbitration he would go fishing about twice per month, sometimes less. He said he had probably been driving for about a year, driving with his left foot. He said his left foot was sufficient for flexing for that activity. He said he took the prosthetic, which he called his buddy, or helper, off to drive. Petitioner said he did not drive for six to eight months after being released from rehabilitation, as he was not able to start walking. He said he got two deer while hunting in November of 2024. He said his hunting is with a crossbow, rather than a compound bow, which he is allowed to do because he is disabled. He said Illinois had recently changed the law so anyone could hunt using a crossbow. He said he was not required to claim a disability for his hunting license. He said to walk to his hunting spot he uses his prosthetic leg, as the ground is flat. (TR p.113-118)

When asked if he spent a lot of time looking for work during his vocational rehabilitation effort, Petitioner said he would, "thumb through, but * * * (he) didn't spend eight hours a day like Karen wanted (him) to, * * * but I did a couple hours here and there." He said he applied for jobs as a delivery driver, but Ms. Kane-Thaler told him that was impossible, not something he could do without dealing with a computer and people all of the time. He said he applied for jobs to keep Ms. Kane-Thaler happy. Petitioner said that in April of 2024 he decided he did not want to participate in the rehabilitation program anymore. He said they cut him off and is Social Security disability kicked in. (TR p.119-121)

Petitioner said his friend was a groundskeeper at a golf course, and could find him something to do, but he wanted to make just as much money, and that would not be a career, so he did not look into it much. He said his friend said if he came out they would keep him busy, but Petitioner thought this was minimum wage work. When asked what kind of career work he had in mind, Petitioner said that as of the date of arbitration he did not really have one in mind, "we'll see." (TR p.121-122)

Petitioner said that he and Dr. Femino discussed options for his ankle before the amputation was performed, but he did not recall if they discussed an ankle fusion or surgery to address his flat foot, saying they discussed options and decided amputation was the best option. Asked if amputation was his idea at first, Petitioner said it was their mutual idea. (TR p.124)

Petitioner said his early training was in regard to safety, OSHA, which was required to work on the job. He said while he knew how to run an excavator, in his union it was not legal to do so. When asked if he could join the operators union and do that work, Petitioner said he could not, he would be in too much pain, the machine would beat him up daily. He said he could read blueprints, but it was not his job to read blueprints, he was to do the work. (TR p.125-)

On redirect examination, Petitioner said his girlfriend's son had a Chrome Book from school, but Petitioner did not do anything with it. (TR p.126)

Petitioner said he had been moving around in his chair while testifying, saying it was what he did all day long, as his back and neck were not comfortable. He said that was true at night as well, when he was trying to sleep. He said he also could not stand in one spot without moving, and like everybody, he alternates between sitting, standing, and moving around. (TR p.127-128)

Karen Kane-Thaler

Ms. Kane-Thaler was called as a witness by Respondent. She testified that she was a vocational consultant, noting her various certifications. She said she typically performed vocational assessments and return to work support in the State of Illinois. In this case she was to provide job placement services if in her initial assessment she felt that was appropriate. She described how a job assessment was performed, meeting with the person to obtain information, reviewing medical records, and then performing a labor market survey. She would then request to meet again and start vocational exploration, rehabilitation, including at least free online computer classes, working on resumes, applying for jobs, looking for jobs on the person's behalf, and then having the person apply for the jobs themselves. She said she did this in regard to Petitioner, and she thought he was an appropriate candidate to return to the workforce. (TR p.131-133)

Ms. Kane-Thaler said that after meeting with Petitioner she issued a report on March 2, 2023, and then met with him again on March 14, 2023, to initiate return-to-work services. She said she presented him with a rehabilitation plan draft, setting him up for free online computer classes, and showing him how to use them, as Petitioner had reported he did not really have any computer skills. She said he used a tablet and a smart phone. She said certain responsibilities/expectations were given to Petitioner, that they would speak three times a week, the expected time frame for completing the classes, his working with her on a resume, and 18 employer contacts per week, which could be applications, in person or online. She said computer classes could take longer for a person to complete, but could usually be completed in four to six weeks. In Petitioner's case, they started on April 1, he did not really work on them, but he was then delayed by several things, including a surgery, so they restarted in August and with reminders he had completed them in two to three additional months. (TR p.133-135)

Ms. Kane-Thaler said Petitioner was to document his job applications on provided forms and submit them weekly either directly to her or to her through his attorney. That work began in October, but no forms were received until December or early January. She said there was no consistency on how many were done per week, sometimes it would be four, other times as many as fifteen. She testified that Petitioner was of the opinion that when he was ready to go back to work, he would go back to work. She said he was not eager to participate in the program. She said he was busy doing other things, including medical, and that was something she dealt with everyday in this work, and she was willing to work with that. She said the three times per week communications was sporadic, sometimes he would be available, other times he would not. She said he would be upset at times, and she allowed people to voice their frustrations. He would note he did not see the need to look for a job or the need to do computer classes. She said she would give Petitioner job leads, but he was not consistent in following up on that, and he would apply for jobs that were in excess of his weight restrictions,

with his saying his restrictions were ten to fifteen pounds and his then applying for jobs requiring seventy pounds. (TR p.136-139)

Ms. Kane-Thaler said they had been working with Petitioner going back and forth to Iowa, and dealing with his father's illness and death, and when he was again settled back in Rock Island, she tried setting up WebEx meetings with him, he accepted one, and then he was unavailable. She communicated with Petitioner's attorney, and he ultimately advised her that Petitioner had elected not to participate any longer. She said she sent a confirmation letter to that effect to his attorney noting Petitioner's not participating. (TR p.139-140)

Ms. Kane-Thaler stated that in her opinion Petitioner was not an active participant in the rehabilitation program. She was of the opinion that over the period of nearly a year, Petitioner did not make a good faith effort in the program or a good faith effort to find employment. (TR p.140)

On cross examination, Ms. Kane-Thaler said she had been hired by Respondent, not by Petitioner or his attorney. She said that up until 2005 her work had principally been for Petitioners, and subsequent to that time she had worked for three companies, almost always for employers, with occasional exceptions. She said Petitioner advised her that he was lacking in computer skills, but she said he was using a tablet and smart phone, which were an easy transition to use a laptop or computer for basics. She noted some of the computer classes were simple, such as how to use a mouse or Windows. She agreed that Petitioner could not go back to his previous career as a pipe setter or union laborer. (TR 141-144)

Ms. Kane-Thaler said that when she first began meeting with Petitioner she did not have medical records indicating Petitioner was to be undergoing an additional procedure on his right leg or ankle, he still had his right leg, but Petitioner did advise her of a planned medical procedure. She said at that time she was doing a labor market survey for sedentary types of employment Petitioner would qualify for. She said her work was paused when he had the amputation, and then in the beginning of August she reached out to him again and started talking to him about computer classes and his going to the library for that. She said she did not know if he did not get his prosthetic until March of 2024, but she knew he was at times using a scooter. She said that after he ended participation in the program she did not see subsequent medical records until December of 2024 when she was asked to potentially be present for testimony, as she had closed her file in April or May of 2024. She said she had not seen an FCE report or medical reports for subsequent to her closing her file and her testimony at arbitration. (TR p.144-149)

Ms. Kane-Thaler agreed Petitioner's union wage at the time of this accident would have been about \$29 per hour, and union wages would probably have increased since that time, though she did not know what his exact pay in that job would be as of the date of arbitration. She agreed that in one of her reports in March of 2023 she discussed Petitioner's transferrable skills and general educational development, developed through the use of multiple software applications, using U.S. Department of Labor and Dictionary of Occupational Titles data. She said her findings were based on Petitioner's reasoning, math and language skills, based on his work history and his having an associate's degree, not upon testing performed on him. She said she had a typo in her first reference to the math score, but had a lower, correct score on a subsequent page. She said that lower math score would be the equivalent of a junior high school to high school educational level. She said 18 employment contacts a week could be nine applications at the beginning of a week and nine follow up contacts later in the week, it did not mean contacting 18 different employers that week. (TR p.149-155)

In regard to future earning capacity, Ms. Kane-Thaler said he had the potential to make at least minimum wage, and the potential of making a comparable amount as he had before, based on his associates degree and the free computer classes that had been offered to him. She noted that the minimum wage as of the date of arbitration was \$15 per hour, but it would have been a lesser amount in 2023 and 2024. (TR p.155-158)

On redirect examination Ms. Kane-Thaler testified that for the last five years she had been employed by Genex Services. She did not know if they marketed to insurance companies, but she assumed they did. She said much of her work came from the actual employers or their attorney. (TR p.158-159)

MEDICAL EVIDENCE

On April 15, 2021 Petitioner was transported by ambulance from the accident site at the Rock Island Arsenal, to the Emergency Department at Unity Point Rock Island, due to back and right lower leg injuries. Petitioner was seen in the emergency room, where he gave a verbal history of having a six to eight foot steel I-beam fall and strike his back and right leg, where a 7 cm right thigh laceration was noted. Petitioner was in severe pain. A CT scan of the thoracic spine found a compression deformity of the T12 vertebrae, with a greater than 50 percent midbody height loss. Vertebral body fragments were seen to be bowed posteriorly, resulting in moderate central canal stenosis at that level. Based on the imaging, Petitioner was advised it was necessary that he be transferred to a higher level of care facility, and he was discharged for transfer to University of Iowa hospital approximately four hours after his arrival. (PX 4 p.1,7; PX 2 p.1,3,8,12)

Petitioner was admitted to the University of Iowa Hospital in Iowa City, Iowa on April 15, 2021. Upon admission, it was noted that Petitioner had some right lateral leg and foot paresthesia, which was new, as well as the laceration in the right knee area. Consideration of operative vs. nonoperative care was given, but due to increased complaints of right leg radicular symptoms Petitioner wanted to proceed with surgery. On April 18, 2021 a posterior thoracic/lumbar spinal fusion was performed by Dr. Pugely. This facility renumbered the fractured vertebra as L1 as opposed to its previous numbering as T12. The fusion was extended across multiple vertebrae. Petitioner previous had a hardware fusion from L4 to the sacrum, and this surgery fused T10 through L3, leaving L3/4 unfused. Post-operatively, Petitioner was discharged on April 27, 2021, for continued treatment at an acute rehab facility. (PX 6 p.6,7,11,17,19; PX 7 p.1-3; RX 13 p.1-3)

Dr. Pugely began post-operative follow up care on May 20, 2021, and reported to that doctor that he was walking with a walker and physical therapy, and believed his leg strength was coming back. Petitioner advised his nerve pain in the legs had improved, especially the right leg burning sensation. He had recently gotten a right knee brace to help with instability in that knee. He was kept off work. When seen on June 24, 2021, Petitioner reported continued improvement with strength, walking longer distances with his walker, and using his cane to go up and down stairs. Dr. Pugely noted he was happy with Petitioner's progress. He was to remain off work. When seen by Dr. Pugely on August 5, 2021, Petitioner was noting the "divot in his upper lateral leg," and noting some paresthesia around his right ankle and foot. He noted he was still wearing his right knee brace as his quad still was giving out on him. A pain drawing of that date revealed pain in the upper and lower back, on the outside of his right thigh, in the area of the right knee, and in both lower legs and feet. Petitioner was to remain off work, but was advised he could lift up to 15 pounds. He was told he could drive short distances, but only when off pain medication. (PX 8 p.1,4-5,8-9,12,14)

A nerve conduction velocity study of August 19, 2021 suggested, but was not diagnostic of, a sensory polyneuropathy of the lower extremities. (PX 9 p1-2)

When seen by Dr. Pugely on October 7, 2021, Petitioner was complaining of paresthesia in his bilateral feet and ankles, right worse than left, additional testing was ordered for the next visit to assess whether any of his complaints were from the area of his prior fusion. It was noted that Petitioner's lower leg numbness was likely related to his L1 fracture and resulting trauma to the nerves. He continued to be restricted from work. An MRI of the thoracic spine was performed on December 6, 2021, and showed no complications at the fusion site, but noted moderate to severe thecal sac compression from L1 through L4. Petitioner was seen by Dr. Pugely on December 9, 2021, with continued complaints of paresthesia in the bilateral lower legs and feet, but no significant low back pain. The MRI findings were discussed, and an injection at L3-L4 was recommended due to slight progression of stenosis at that level. Petitioner was to remain off work. (PX 8 p.15,18-19)

Petitioner was seen by Dr. Pugely on December 9, 2021, and gave a history of having sustained a right ankle injury the evening before while walking down steps into his basement, slipping on some leaves that were slippery, twisting his ankle, with immediate pain and swelling. He was being seen on this date for routine follow-up for his spinal fusion. X-rays of the right ankle revealed a displaced spiral fracture of the distal fibula. Petitioner was placed in a walking boot and was to use a cane. X-rays showed a mildly displaced distal fibular fracture. He was to return in three months, but was told to call sooner if his pain worsened or the symptoms changed. He was to remain off work. (PX 11 p.139-144; RX p.1-2)

When seen by Dr. Pugely again on February 3, 2022, Petitioner was noted to have made improvements in his walking gait and overall function, and was no longer using a walker, only using his cane once in a while when he ambulated. He was still complaining of back pain throughout the day as well as numbness and tingling in his feet. It was noted he still had occasional issues with balance when walking up hills or going up or down stairs, as his right leg was not completely strong. Dr. Pugely anticipated Petitioner would be at MMI in two months, one year after his accident. Petitioner was allowed to return to work with a 5 pound lifting limit as well as limited bending and twisting. An FCE was discussed, but it was noted, "(u)nfortunately he is recovering from an ankle injury that is not work related." In a separate note of that same date, Dr. Pugely addressed Petitioner's right ankle injury. Petitioner's pain and swelling had improved since his last visit, but Petitioner reported that while swelling had improved, he had significant instability of the ankle when walking without the boot. Diffuse swelling of the ankle was observed, and there was pain with palpation of the distal fibula and deltoid ligament complex, and Dr. Pugely decided to have Petitioner seen by the clinic's foot and ankle team. It was noted he could work with the same restrictions noted above. (PX 8 p.22-23,28,30,32-33,35-36; PX 11 p.125,133-138)

On the referral of Dr. Pugely, Petitioner was seen by Dr. Femino on February 9, 2022, for evaluation of a right ankle fracture. The history recorded at this visit was "(i)njury occurred when he was outdoors on some river rock and he started slipping and ended up jumping off a 2.5 foot retaining wall. When he landed his foot twisted and he had immediate pain followed by subsequent swelling and bruising. His first x-ray revealed a mildly displaced oblique distal fibular fracture." It noted subsequent x-rays showed worsening instability and space widening, leading to this referral. Petitioner had been full weightbearing while in his Aircast boot for the 8 weeks prior to this visit. Petitioner described numbness, tingling and "needles" as well as aching in the entire foot and ankle region. After a physical examination and review of x-rays showing instability and space

widening, Dr. Femino noted Petitioner had a significant planovalgus alignment. Dr. Femino noted that he suspected the neuropathy might be at least partly responsible for the worsening instability of the ankle fracture. Surgery to correct the ankle instability and prevent expedited ankle arthritis was recommended. Petitioner also had a flat foot, but surgery to correct that was postponed until after the ankle fracture was stabilized. The ankle surgery would also lengthen the peroneus brevis and reconstruct the deltoid, and other procedures were also possible at that time. (PX 11 p.125-129)

Petitioner underwent right ankle surgery on February 14, 2022, with a right open reduction of his ankle fracture, an ankle syndesmosis repair, a collateral ligament repair, and a gastrocnemius release were performed. A Taylor Spatial Frame was placed on the right leg. He was advised not to work. He was discharged from the hospital on February 16, 2022. (PX 11 p.111-113; PX 12 p.1-22)

Post-operatively, Petitioner was examined by Dr. Femino or other medical personnel on numerous occasions. On February 25, 2022. Petitioner reported he was doing well, with minimal walking and no complications from the spatial frame and walking base attached to his leg. Another follow up appointments occurred on March 11, 2022. An x-ray of the leg and foot was performed on March 31, 2022. (PX 11 p.102-108; PX 12 p.24-29)

On the referral of Dr. Pugely, Dr. Pham saw Petitioner for a back pain evaluation on March 23, 2022. After a physical examination of Petitioner and reviewing MRI images of December 6, 2021, Dr. Pham was of the opinion Petitioner had spinal stenosis of the lumbar region, degenerative disc disease and history of lumbar spinal fusion. He felt Petitioner's pain complaints could be attributed in part to those diagnoses. Petitioner was given several options for future treatment, including more physical therapy (after his right foot surgery had healed) or bilateral epidural steroid injections at L3-L4, which was to be scheduled. Petitioner received bilateral L3-L4 epidural steroid injections by Dr. Pham on April 8, 2022. Petitioner was seen again on April 21, 2022, reporting further back improvement but complications relating to his right foot and ankle trimalleolar fracture. It was noted Petitioner still had numbness and tingling in his right leg. While weight limits for physical therapy were increased, it was noted those orders could be superseded by Petitioner's foot and ankle restrictions. (PX 8 p.37,42-43,54,56-59; PX 12 p.30-36)

Dr. Femino saw Petitioner on March 31, 2022. It was felt Petitioner was doing well, with no infections of the pin sites of the spatial frame. It was anticipated the frame would be removed in six weeks, at which time his leg would be placed in a total contact cast. (PX 11 p.99-100; PX 12 p.37-44)

On April 15, 2022 Petitioner was seen at Trinity Moline emergency department, with redness and swelling to the right foot, and an external fixator in place. He said he did not have sensation in his foot or lower leg, but he noticed worsening swelling in the past 24 to 48 hours, as well as worsening redness where the fixator was attached. Physical examination revealed redness and warmth around the fixator sites, and the lower leg was significantly swollen. The impression at that time was of cellulitis of the right lower extremity and postoperative infection. The University of Iowa was called, and they accepted the transfer of Petitioner to their facility. (PX 14 p.1-7)

Dr. Femino again saw Petitioner on April 16, 2022. There was redness and swelling around the pin sites on the lower right leg, and he was admitted to the hospital to treat a possible infection. He was discharged on April 18, 2022. (PX 11 p.52-76)

On May 9, 2022, the spatial frame was removed from Petitioner's right leg while Petitioner was under general anesthesia, and a total contact cast was then applied. Petitioner was also treated for infected tibial and calcaneal tracts. (PX 11 p.46-53)

PA Christensen saw Petitioner In follow up on May 20, 2022. He appeared to be doing well. (PX 11 p.44-45)

Dr. Pugely saw Petitioner on June 2, 2022. He noted Petitioner's back condition had plateaued due to setback with his right ankle and foot, including hardware removal, infected pin sites, and cellulitis. As of this date he was still non-weightbearing on the right foot . Petitioner was still complaining of some back pain throughout the day, as well as numbness and tingling in the right leg. He said as far as the back was concerned, he could return to work with lifting limited to 10 pounds, with limited bending, lifting and twisting, but due to the foot condition, it would be limited to five pounds. (PX 8 p.51,53)

Petitioner was seen by Dr. Femino's Physician Assistant, PA Christensen, on June 3, 2022. Petitioner's right foot dorsiflexion was found to be limited to neutral. It was felt Petitioner was doing well, with no signs of infection or complication. PA Christensen again saw Petitioner on June 23, 2022. It was noted that Petitioner had significant right lower leg neuropathy from his prior spine trauma. X-rays showed his fracture was well healed. He was doing well in his Aircast boot, doing partial weightbearing with crutches. While all pin sites from his surgery were fully healed, Petitioner had moderate to severe swelling of the leg, from the knee to the foot. It was noted Petitioner had significant flatfoot, and might potentially need surgery to correct that in the future. He was fitted with an AFO brace during this visit, but was to continue with the Aircast until the AFO brace was ready, and he could partially weight bear with crutches. (PX 11 p.95-97)

Petitioner attended 26 physical therapy sessions at Rock Valley Physical Therapy from June 6, 2022 through September 12, 2022. At the conclusion of his eight weeks of physical therapy Petitioner had not met any of his goals, but was, according to the therapy staff, progressing. He was scheduled for a functional capacity examination on September 13, 2022, but on September 22, 2022 the therapists were advised by Petitioner's case manager that they wanted Petitioner to do an FCE at a third party unbiased therapy group. (PX 13 p.1-74)

Dr. Femino examined Petitioner on August 25, 2022, six months after his right ankle surgery, and three months after the removal of his spatial frame. On this date Petitioner was discouraged, with right foot pain which was poorly localized due to spinal injury neuropathy. He was using a second AFO brace, as the first did not fit well. He had an ulcer over the medial malleolus, which Petitioner said developed while he was wearing the Aircast, but Petitioner felt it was gradually healing. Petitioner reported difficulty ambulating with the AFO brace due to pain, and his foot "not feeling right." He was receiving physical therapy five times per week. Physical examination revealed the medial malleolus ulcer, which was deemed superficial, as well as tenderness in several areas of the ankle. X-rays showed solid and robust callus formation along the fibula and early posttraumatic arthritic changes of the ankle. Dr. Femino noted that a lot of Petitioner's issues stemmed from Petitioner's spinal injury and neuropathy. Petitioner was to continue getting physical therapy for his right leg. (PX 11 p.89-92)

Petitioner saw Dr. Pugely on November 10, 2022, a year-and-a-half after his accident. In the recent past, he had completed an FCE and he said he had tried his best during that test. It was noted he was continuing to be treated by his right ankle team for multiple complaints. Dr. Pugely believed Petitioner had made significant

recovery in regard to his back, and said he believed Petitioner's persistent restless leg symptoms at night were due to his spinal cord injury. Dr. Pugely declared Petitioner's low back condition to be at maximum medical improvement, and noted his restrictions were permanent. Dr. Pugely did an AMA impairment rating for the low back injury, but it was based on the **5th Edition** of the Guides to the Evaluation of Permanent Impairment of the AMA, not the 6th Edition, published in 2007. Only the latest edition is to be considered, as required by §8.1b of the Workers' Compensation Act, and as such, it is not considered in this decision. (TR 8 p.47,50)

Petitioner was seen by Dr. Femino on January 10, 2023. His ulceration had healed, and Petitioner reported that his AFO brace was helping him with his daily activities. Petitioner felt his ankle was worsening, that the foot and ankle were unstable and collapsing inward. He said his symptoms increased when he was not in his brace. On physical examination, Petitioner was found to have medial sagging when walking. A weightbearing CT was performed on this date, and showed the collapse of the medial arch and hindfoot valgus as well as sinus Tarsi impingement as a result of his flatfoot deformity. The ankle had a valgus tilt. Dr. Femino felt adding a medial forefoot post to his current brace might be beneficial. Other surgical options were discussed. Petitioner then asked his medical team whether a below knee amputation would be a definitive treatment in his case, and Dr. Femino said that option would be discussed if surgical treatment was to be considered in the future, noting it would be "an elegant solution to his complex problem" and could possibly get him back to his activities and duties quickly and reliably. Petitioner was in favor of that option as he had been very active before this trauma. Meanwhile the nonoperative treatment plan was to be followed. (PX 11 p.79-81,87-88)

Petitioner called Dr. Femino's office on February 22, 2023, advising the staff that ten days earlier he had slipped while walking, and caught himself on his right leg. He said he was wearing his brace at the time. He said the ankle discolored somewhat and he could move everything, but it did not feel quite right. An x-ray was ordered and Petitioner had it done locally. PA Christensen reviewed the x-rays and then spoke with Petitioner. The x-rays were interpreted by him to show the ankle was fine, but Petitioner had metatarsal neck fractures of the third, fourth, and possibly fifth metatarsals. While the fourth was somewhat mildly displaced, it was felt they would heal with the use of boot and offloading the foot for four to six weeks for healing. During this telephone conversation, Petitioner said he had given the amputation of the right foot and ankle more thought, and he was fairly set on the idea of a potential amputation. He wanted his May appointment with Dr. Femino moved up so it occurred as soon as possible. (PX 11 p.77-78; PX 22 p.1-3)

Petitioner's appointment was moved up, and he saw Dr. Femino on March 24, 2023. Dr. Femino noted that Petitioner's ankle fracture had healed well after his surgery, but Petitioner had "significant underlying planovalgus alignment and had been living in a custom leather AFO brace. He also had significant lower extremity neuropathy as a result of his prior spine burst fracture. He noted Petitioner had continued to struggle with his gait, pain, and instability. A major flat foot surgery was discuss, but Petitioner did not want to undergo another big surgery with a long recovery, he wanted to move on with his life, and he could potentially have more function with a below the knee amputation. Dr. Femino advised Petitioner the reconstruction surgery recovery would be at least double the recovery time of the amputation. Dr. Femino said he respected the amputation decision and felt it was a viable option for Petitioner. Surgery was to be scheduled as soon as possible. Also on March 24, 2023, Dr. Femino wrote a "To Whom It May Concern" letter, stating that

Petitioner had “an underlying, severe flatfoot deformity with chronic foot and ankle pain,” and had elected to have a below knee amputation due to his chronic pain and disability. (PX 11 p.43)

Petitioner was admitted for right below the knee amputation on May 17, 2023. His preoperative diagnosis was chronic pain due to neuropathy, and gait disturbance. During the surgery, Petitioner’s right leg was amputated below the knee and the peroneal nerve, sural nerves, and tibial nerves were transected. Due to prior deep venous thrombosis and pulmonary emboli, Petitioner was to begin taking Eliquis after the surgery. (PX 11 p.20-32)

Petitioner was seen by the staff of Hanger Clinic while in the hospital following his amputation, May 20, 2023, when he was provided with rigid dressings for his stump while healing, as well as other assistive devices, and then periodically while healing, and being measured for a recommended prosthesis. On August 7, 2023 Petitioner was seen for casting of his socket, and on that date he reported that he had fallen on his limb on August 2, 2023, after he lost his balance and, without a foot, fell down. They found a healing wound proximal to his patella. On September 19, 2023 he had pre-fitting adjustments made to his prosthesis, and delivery and fitting for his prosthesis was scheduled for September 19, 2023. Unfortunately, when Petitioner arrived that day, he advised them that he had fallen on his limb while trying to change a lightbulb, and his leg was very swollen on September 19, so the prosthesis could not be donned. A new appointment for getting the prosthesis was made for October 6, 2023, but the leg was still too swollen on that date as well. He was seen again on October 24, 2023, but the prosthesis could not be delivered to him at that time as his insurance had changed. The prosthetic appears to have been supplied to him on March 13, 2024, as the record of that date is the first which notes his putting on and taking off a prosthetic, and ambulating without discomfort. He was going to ambulate using a cane for a while at home. When seen on March 20, 2024 some adjustments to fit were made, and Petitioner voiced happiness with the fit. He was advised to wear it for four to five hours at a time during the next week and increase it by an hour at a time each week until he was wearing it full time. Subsequent visits involved small adjustments to the prosthesis, but Petitioner appeared happy with its function. When last seen on July 9, 2024, the prosthesis was making a burping sound with each step, but with minor adjustments the noise disappeared and Petitioner was very happy with the fit and function of the prosthesis. (PX 23 p.1,21,24-26,29,32,34-35,38-39,47-48)

Petitioner was seen in follow up by PA Christensen on June 16, 2023, and reported his pain was mostly at night. He had good knee flexion and extension, diminished sensation to the stump, and only mild swelling of the stump. (PX 11 p.10-19)

On June 28, 2023, Petitioner began care with Dr. Aschenbrenner in the PM&R amputee clinic. Petitioner noted he had longstanding right thigh discomfort and neuropathic sensation down his right leg since his spinal injury, but he had no new pain symptoms secondary to his amputation. Dr. Aschenbrenner noted Petitioner had experience appropriate healing of his amputated limb and appeared ready for the creation of a prosthetic. Petitioner was to see Dr. Femino the next day and was to see if Dr. Femino felt he was ready to see a prosthetist. (PX 11 p.6-9)

Petitioner saw Dr. Femino the next day, June 29, 2023, six weeks post-surgery. Dr. Femino noted Petitioner had moderate swelling, could fully extend and flex his knee, and had no tenderness to palpation. A

follow up appointment was made, but Petitioner was advised he could cancel it if feeling well, and just follow up as needed. (PX 11 p.4-5)

On July 20, 2023, Petitioner was seen by Dr. Pugely for a routine follow-up for his low back. He was still complaining of right hip and thigh pain, and said his thighs were still the weakest part of his lower extremities. It was noted that his back pain was stable and that he was able to do normal activities of daily living. Dr. Pugely noted that Petitioner's "right ankle injury should be covered under his claim has (sic) he has significant weakness in his right LE which caused him to fall and sustain the fracture which lead to his BKA." (PX 8 p.60,63)

On October 26, 2023 Petitioner was seen in Trinity Rock Island Emergency Department for a wound check, stating he had noticed drainage coming from his amputation site two weeks earlier, had seen his primary care provider, who prescribed an antibiotic due to a positive Staph Aureus result. A CT scan two days before arriving in the emergency room had been normal. He was not using a prosthesis. An examination of the amputation site did reveal a puncture wound, but no redness or warmth, and the doctor could not milk any fluid out of the wound. An ultrasound revealed fluid present, and it was aspirated. Petitioner was advised to continue taking his antibiotic. (PX 15 p.1-10)

Petitioner was seen by Dr. Aschenbrenner on February 14, 2024. Petitioner reported that he had not gotten his prosthesis as he had fallen onto the residual limb and had developed a wound. After the wound healed he had not been able to obtain the prosthesis as he needed a new "face to face visit" for insurance purposes. It was noted that Petitioner currently had minimal phantom limb symptoms, and they did not limit his function. Dr. Aschenbrenner noted Petitioner was appropriate for prosthetic fitting as he had normal range of motion and no open wounds. A new prosthetic prescription was provided Physical therapy was recommended as well as home stretching exercises. (PX 11 p.2-3)

DEPOSITION TESTIMONY OF DR. ANDREW PUGELY

Dr. Pugely was deposed as a witness by Petitioner. He testified that he was board certified in orthopedic surgery. His testimony in regard to history, complaints and physical findings was consistent with his medical records summarized above. His treatment in the days following resulted in his performing surgery on Petitioner's spine to stabilize Petitioner's thoracic vertebrae fracture. He said Petitioner had an incomplete spinal cord injury, which could cause major weakness and bowel dysfunction, not a complete spinal cord injury, which would have left him with no function at all. He said in the surgery he fused from T10 to L3, from two levels above the fracture to two levels below the fracture, using ten screws and two rods. Dr. Pugely said Petitioner, prior to this accident, had already had a fusion from L4 to the sacrum, and he chose not to fuse all the way from T10 to the sacrum in this surgery as it would have required opening the spine taken a longer period of time to remove hardware and then put additional hardware back in, and the surgery was already going to be long, and he decided not to add additional time to the surgery. In addition, by only doing the upper levels, the L3-4 level was left unfused, which increased the chances of Petitioner's fracture healing. (PX 2 p.6,18-22)

Based upon the magnitude of Petitioner's injury, Dr. Pugely did not anticipate he would get to 100% recovery, but he felt he had made substantial recovery, though he had some residual issues with his spinal cord,

including leg weakness, imbalance and unsteadiness. He said Petitioner reported being unsteady, and the doctor said he could observe that himself. He said recovery time for walking took over a year to get to where he could walk with minimal aid, and the difficulty was due to the fractured spine and the spinal cord injury. When asked about the “divot” in Petitioner’s right upper leg, Dr. Pugely said that being struck by the steel beam or smashed on the ground had resulted in major injury to Petitioner’s thigh muscle. He noted that four months after the accident Petitioner was wearing a right knee brace as his leg would give out on him, and that was due to the injury from the steel beam striking him. (PX 2 p.23-26)

Dr. Pugely testified that he saw Petitioner on December 9, 2011, being seen on that date for his back, but during that appointment it was noted that Petitioner was having ankle pain and dysfunction, and Petitioner told him he had slipped on some leaves walking down the steps into his basement, twisting his ankle. When seen on that date, Petitioner had pain and swelling and could not walk correctly. X-rays were taken at that time, Petitioner was given a boot, and Dr. Pugely referred Petitioner to Dr. Femino for treatment of the ankle. Petitioner had been seen that day for his back condition. (PX 2 p.29-31)

Dr. Pugely said Petitioner reached MMI for his spine condition on November 10, 2022. He said fusions can take up to two years to solidify, He said Petitioner’s restless leg syndrome was due to his incomplete spinal cord injury, that Petitioner had massive sensory dysfunction, the perception of the limb in space, and did not know where his limb was unless he was looking at it. He said that on November 10, 2022 Petitioner was at MMI and was given permanent restrictions for his back, periodic bending and lifting and twisting with 40 pounds, and lifting 20 pounds frequently. He said Petitioner was able to perform nonmaterial handling activities, including bending, squatting, repetitive kneeling, sustained kneeling and ladder climbing on an occasional basis, and he could stand and walk on a frequent basis. Dr. Pugely said he last saw Petitioner in July of 2023, at which point his back was stable, but he still had permanent right thigh and/or hip pain, and weakness of the right thigh. He noted that he was surprised a bit on that date as Petitioner arrived without his right lower leg. He felt Petitioner had a much higher probability of subsequent spine fusion surgery because of his fracture and the length of his fusion. He believed Petitioner would continue to have back pain and numbness and sensation problems in his remaining foot. He said Petitioner would get stenosis with increasing pain in the future, so he felt he had a greater than 50 percent chance of needing additional surgery. (PX 2 p.31-32,35-38)

Dr. Pugely was of the opinion, as noted in his July 20 note, that Petitioner’s right ankle injury should be covered by his claim due to his having significant weakness in his right lower extremity, which caused him to fall and sustain the fracture that eventually led to his below the knee amputation. He said it was highly unlikely that Petitioner would have fallen on stairs if he had not had this back injury, that it was more likely than not that he would not have broken his ankle if he had not had this accident and the resultant incomplete spinal cord injury. He went on to say that his back injury also made it more difficult for Petitioner to recover from his ankle fracture. He said all of the treatment he provided to Petitioner was necessary and the result of the steel beam falling on Petitioner’s back. (PX 2 p.40-43;58)

On cross examination, Dr. Pugely said he had no opinion in regard to whether Petitioner still needed Eliquis for blood clots. He said the nerve damage suffered by Petitioner was to the spinal cord itself. He said symptoms from the spinal cord damage is not just immediate, it evolves over time, such as subtle weaknesses. He said Petitioner’s sural nerve problems in his calves were probably not work related, though he would defer

to Dr. Femino in regard to that. When asked if Petitioner had not mentioned weakness being connected to his fall, Dr. Pugely said that robust construction workers generally do not slip on stairs, that if his strength had been normal he would not have slipped, but while that was his opinion, “it is impossible to say with any kind of certainty.” (PX 2 p.45-46,49-50,54-55)

Dr. Pugely said he had to do a five level fusion rather than a three level fusion due to Petitioner’s size, that a three level fusion would not have sufficient purchase points “to hold a 300-plus guy up with screws.” He agreed that Petitioner did not have long term bowel and bladder dysfunction. (PX 2 p.56-57)

DEPOSITION TESTIMONY OF DR. JOHN FEMINO

Dr. Femino was deposed as a witness for Petitioner. He testified that he was board certified in orthopedic surgery, focusing almost entirely on adult ankle and foot reconstruction. His testimony in regard to history, complaints and physical findings was consistent with his medical records summarized above. Dr. Femino testified that he first saw Petitioner on February 9, 2022, about eight weeks after Petitioner suffered a nondisplaced fibula fracture. He said earlier x-rays had indicated Petitioner had a stable ankle fracture, but subsequent x-rays, when Dr. Femino saw him, showed the fracture was displaced further, that the talus had shifted, and the deltoid ligament was compromised. He said the fracture had not fully healed, but it was stuck in the displaced position. He felt one reason for the ankle getting worse was Petitioner’s fractured spine, which he said was like a hand grenade going off in front of the spinal cord at the L1 level, causing a lot of potential for neurologic damage, weakness and sensory abnormalities. He said that when he saw Petitioner, he had hypoesthesia, numbness, in both legs, which was not unusual for a burst fracture, which went all the way to his thigh, meaning it was significant. He said Petitioner had a neuropathic fracture, and his degree of pain would not be like a normal pain sensation, a person with that condition have decreased pain, and “will walk through an injury and then fractures will continue to displace, and that causes bone resorption. He then experienced a loss of stability as he was walking on the injured foot. (PX 3 p.7-12)

Dr. Femino said Petitioner had a preexisting flatfoot condition, a common deformity, especially for people who are obese. He did not think that had anything to do with Petitioner’s injury. He said if they had been able to salvage Petitioner’s ankle, realigning the foot so it was well-aligned would have been critical in giving Petitioner a functioning foot on a long-term basis, but it would not have been a major issue but for Petitioner’s ankle fracture, as it was a common deformity, and most people with the deformity do not have pain. (PX 3 p.13-15)

Dr. Femino testified that the first surgery he performed on Petitioner’s right leg was to take down the fibula fracture and the tibia fracture, both of which had to be mobilized, nailing the fibula to stabilize it, and reconstructing the deltoid ligament. He then put an external fixator on the leg to shield the ankle from weight-bearing stresses. He said the surgery resulted in a good clinical outcome, but not a good outcome from a neuropathic pain standpoint. He said the neuropathic pain added an extra risk of displacement after the surgery, as Petitioner lacked a normal pain response. He testified that but for that abnormal pain response, an external fixator would not have been necessary. He said the external fixator involve an “erector set type of thing that goes on with pins into the tibia, wires into the foot, and connecting bars that allow us to control things.” (PX 3 p.16-18)

Dr. Femino said Petitioner was later admitted to the hospital in April of 2022, due to a pin tract infection with cellulitis, which was treated with antibiotics. In May of 2022 the frame around the halo was removed, the pins were removed, and the pin sites where the infections had been were debrided to remove any infected bone. (PX 3 p.19-22)

Dr. Femino said that as of Petitioner's August 25, 2022 office visit, it appeared that the surgery had successfully salvaged Petitioner's ankle, it was functioning, stable, and did not have significant arthritis, but Petitioner was having continuous neuropathic pain, it was global pain in that area, despite already being on gabapentin, which was for the neuropathic pain. He and Petitioner had a long conversation, Petitioner was very discouraged due to his ankle not getting better, and due to his pain. Amputation was discussed. Dr. Femino said the amputation was not to be amputated due to instability or arthritis, but due to his neuropathy. He said x-rays showed that Petitioner's flatfoot was not progressive. He said the neuropathy took away his sense proprioception, the sense of position, and he had a deficit in his ability to feel the foot and know where it was, which made it difficult to control. He said Petitioner had the option of pursuing surgery to correct his flatfoot, but he had advised Petitioner that there was no guarantee that he would have a satisfactory outcome and pain relief. His other option was a below-knee amputation, which might have been necessary even if the flatfoot surgery had been successful, and eventually Petitioner had the amputation performed. (PX 3 p.22-27)

Dr. Femino testified that after an amputation most people have a period of time for the stump to recover and a period of time for learning to walk using a prosthesis, and that period of time is usually shorter than the time needed for flatfoot surgery recovery. He said most patients find the amputation liberating. He said phantom pain is always a concern, but in his experience it is relatively uncommon. He said after the surgery Petitioner's care was taken over by Dr. Aschenbrenner. He said he had not seen Petitioner since 2023. (PX 3 p.28-30)

Dr. Femino when asked about Dr. Krause's statement that he, Dr. Krause, was not convinced Petitioner had neuropathic pain, stated that he had several notes reflecting Petitioner had abnormal sensations. He said he did not do neurologic examinations at every visit, but when his records reflect examinations, he had performed them personally and recorded them in his notes, so he did not agree with Dr. Krause. He said Petitioner's nerves were clearly crushed by his vertebral burst fracture, and diabetes would not have cause the polyneuropathy in Petitioner's thigh, that would more typically be from a spinal cord injury. He said he did not believe Petitioner had an undiagnosed idiopathic neuropathy. He said Petitioner's below-knee amputation was due to his neuropathic pain, not the ankle fracture or the flatfoot deformity. He said all of Petitioner's medical treatment had been necessary. (PX 3 p.31-36)

On cross examination, Dr. Femino was asked about the different histories noted in the medical records, including the history given to him, of Petitioner being outdoors on river rock, slipping, and jumping off a retaining wall. He noted the histories were, "all sort of very similar, but not of the same wording, that all could be at the edge of a house." (PX 3 p.37)

Dr. Femino testified that Petitioner's findings were not consistent with a mild, undiagnosed polyneuropathy, he believed they were an effect of the crushed spinal cord on the peripheral nerves in the legs. He said the original x-rays he saw of Petitioner's ankle showed the fibula to be mildly displaced, but the relationship of the talus and the tibia seemed to be intact, the hallmark of stable versus unstable, as if unstable the talus would shift laterally, and if stable it would look congruent, as it did in the earlier x-ray. He said that in

his opinion Petitioner's having walked on an unstable, dislocated ankle joint for two months resulted in ligaments with an abnormal relationship. (PX 3 p.44-45)

When asked if Petitioner would have been able to return to work with no restrictions had he undergone a foot or ankle reconstruction, Dr. Femino said he did not believe he would have been able to do so, as the only solution for his pain would not have been a mechanical or surgical solution, but the amputation. (PX 3 p.48)

When asked if Petitioner was at maximum medical improvement as far as the amputation was concerned, Dr. Femino said he was, as far as he could tell, as he had not seen him. (PX 3 p.52)

DEPOSITION TESTIMONY OF DR. JOHN O. KRAUSE

Dr. Krause was deposed as a witness for Respondent. He testified he was a board certified orthopedic surgeon, with approximately 55 percent of his patients being foot and ankle cases. He did not testify to doing any treatment of the spine. He testified that he did a record review of Petitioner's medical records and diagnostic studies, and generated a report dated February 12, 2024. He said an accident involving a beam falling on a back resulting in a five level fusion between the thoracic and lumbar spine would not be expected to significantly impact the lower extremities unless there was a full spinal cord injury at the upper part of the injury, which he did not think had happened. He did not think the emergency room records for the date of accident indicated a neurologic injury. He noted chronic alcohol abuse and diabetes could cause neuropathy. He noted records from 2021 of Dr. Cychoz noted "new paresthesias on lateral side of the right leg." He said Petitioner's previous L4-S1 spinal fusion would be a much more likely explanation for his having some numbness or decreased sensation in either the L5 or S1 nerve distributions, or both. He felt an EMG in August of 2021 did not show anything which would indicate weakness of muscles, and he would expect Petitioner's strength to be normal this far after surgery. (RX 5 p.5-12; RX 5 Exh. A)

Dr. Krause then noted the history to Dr. Pugely for Petitioner's fall and right ankle injury was of a fall down steps, slippery leaves, and a twisting of the ankle. He said x-rays at that time showed an injury to both sides of his ankle, a fractured lateral malleolus, and damage to the deltoid ligament, resulting in Dr. Pugely diagnosing a fracture of the fibula and prescribing a boot and a cane. He was of the opinion that x-rays should have been repeated seven to ten days later, but that was not done until two months later, and that if they had been done earlier it could have shown the need for surgery due to instability. He said the later ankle surgery performed by Dr. Ferimo was appropriate, and the use of a fixator was to help neutralize the ankle. (RX 5 p.13-16)

Dr. Krause said x-rays of Petitioner's foot on August 22, 2022 did not show a significant flat foot deformity, but that as time progressed it became more significant, and it was hard to know why it progressed, saying it could just be the positioning of the x-ray. (RX 5 p.17-18)

Dr. Krause thought Petitioner's below-knee amputation was due to his flatfoot, but said he might have had some nerve pain. He said he disagreed with Dr. Femino's opinion that Petitioner had developed neuropathy from the back injury and that had Petitioner had normal sensation the ankle fracture would have healed with the boot and cane, saying he thought this was a fracture that had to be cast, and that it was a fracture that demanded surgical treatment. He disagreed with Dr. Femino's opinion that the amputation was related to the back injury,

he believed it was just a bimalleolar fracture that should have had surgery, it was just a “missed bimalleolar ankle fracture that should have been treated surgically and was missed.” (RX 5 p.19-20)

Dr. Krause did not attribute Petitioner’s fall to leg weakness, saying that wet leaves or slippery leaves easily explain the fall. He noted that weakness could have made it worse. He was of the opinion that the below-knee amputation was totally unrelated to Petitioner’s work accident. He said the amputation was not an unreasonable operation, and noted he was not there evaluating how bad the big surgery he had before was. Dr. Krause said that he did not know many people who would have performed the amputation just because of the flatfoot deformity, but considering everything Petitioner had been through, he thought the amputation was reasonable. He said the reason he did not think there was neuropathy was because he did not see the neuropathy pain documented, either by Dr. Pugely or in nerve conduction testing on multiple occasions. He just thought this was an ankle fracture which was treated inadequately. (RX 5 p.22-26)

On cross examination Dr. Krause said he had never met nor examined Petitioner, nor had he reviewed any of the treating physicians’ depositions or any surveillance video. He said he had no opinions in regard to the care provided for the back injury, and he would refer to Dr. Pugely in regard to the nature and severity of the back injury. He testified that if the T12 vertebra fracture injured the spinal canal, everything below that injury would have been affected, including all muscles and nerve and sensibility down the legs. Dr. Krause said an injury above T12 would have affected the spinal cord, while below that level it would only affect the individual spinal nerves. He then reviewed the records of a CT scan which showed impingement on the spinal cord, causing moderate stenosis, which he said would showed some impingement on the spinal cord, which would have put a little pressure on the spinal cord. He said if there was significant injury to the spinal cord, that could have caused all sorts of lower extremity symptoms. (RX 5 p.28-33)

Dr. Krause testified that the thecal sac compression seen on the December 6, 2021 MRI was related to Petitioner’s burst fracture, and could cause problems such as pain, tingling, numbness and muscle weakness in the lower extremities as the nerves inside the thecal sac were “getting beat up or compressed.” He said the spinal canal stenosis seen on a CT scan of that same date was related to the burst fracture. (RX 5 p.35-36)

Dr. Krause said Dr. Femino’s treatment was odd, but reasonable, he did not believe it was malpractice. He also noted that he did not believe Petitioner had an alcohol-use neuropathy. (Rx 5 p.37)

On re-direct examination Dr. Krause said the stenosis and thecal sac encroachment caused by Petitioner’s burst fracture were not responsible for Petitioner’s leg symptoms, and did not contribute to his fall on the stairs or the below-knee amputation. (RX 5 p.37-38)

VIDEO EXHIBIT

Respondent introduced video of Petitioner taken on four dates, February 22, 2023, October 6, 2023, October 7, 2023, and August 15, 2024. (RX 11) The videos show Petitioner walking from a vehicle to an office, and to a drugstore, while using a prosthesis, and a moderate limp favoring the right knee is seen. He is also shown driving a vehicle both in 2023 and 2024. On two of the occasions Petitioner is seen outside of a home, without a prosthesis, crawling across the ground to get to a scooter assistive device, getting up from the ground

and placing the knee and remnant leg on the scooter, and using the scooter to get to a step down onto a different sidewalk, getting off the scooter, moving it to the lower sidewalk, and then again rising and placing his remnant leg on the scooter, and continuing to transport himself to a vehicle. On another occasion he reverses that process to reenter the house. In 2024 he is seen in shorts, with the prosthesis readily visible, walking around a pickup truck with a top over the bed of the truck and loading objects which did not appear to be cumbersome or heavy into the back of the truck bed. He again exhibited a moderate limp while walking.

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner was straightforward in his answering of questions posed by both the Petitioner and Respondent attorneys. He did not evade or avoid questions, he appeared to answer them to the best of his ability. He appeared to do his best in describing how he injured his right ankle and foot, but his description of the slope he was descending and the retaining wall rocks he stepped on to get to his lower level patio was somewhat confusing, the words he used did not clearly describe what he was stepping on at any particular point. It was easy to understand how the various histories in medical records described the event differently. The Arbitrator finds Petitioner to have been a credible witness.

Ms. Kane-Thaler also answered all questions put to her by the two attorneys in a straightforward manner. Her testimony was easier to understand, as she was an experienced witness, and she seemed to understand all questions put to her. Much of her testimony, including Petitioner's lack of interest in obtaining a job which would pay less than his union laboring position, was confirmed by Petitioner's testimony. The Arbitrator finds Ms. Kane-Thaler to have been a credible witness.

Dr. Pugely, Dr. Femino, and Dr. Krause all appeared to answer all questions posed to them by the attorneys in a non-biased manner. It is noted that Dr. Krause testified at length about nerve damage that may or may not have existed and may or may not have been caused by Petitioner's having been struck in the thoracic spine by a steel beam, but Dr. Krause's testimony does not indicate any expertise in regard to spinal injuries, all of his practice seems to be limited to the lower extremities, ankle and foot, and, to a slightly lesser degree, the upper extremities. His opinions in regard to nerve damage and its sequelae as a result of the spinal injury is therefore given lesser weight. The Arbitrator finds all three doctors to have been credible witnesses.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether Petitioner's current conditions of ill-being, burst fracture of the L1 vertebrae, trauma to the spinal cord and canal, spinal fusion from T10 through L3, right thigh muscle loss, right fibular fracture and deltoid ligament injury, resulting in a right below-knee amputation, are causally related to the accident of April 15, 2021, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to credibility, above, are incorporated herein.

The parties did not dispute Petitioner's having an accident on April 15, 2021 which arose out of and in the course of his employment by Respondent. Respondent only disputes causal connection for Petitioner's lower right leg, ankle, and foot injuries, resulting in a right below-knee amputation. (Arb. Exh. 1; TR 6)

Petitioner while checking a truck had another piece of machinery dump its load, including a steel beam, on top of Petitioner, severely injuring his spine, causing emergency treatment in Rock Island and transfer to a University of Iowa hospital for continued spinal care. Dr. Pugely, a spine surgeon, described Petitioner's back injury in his notes and testimony as not simply a fracture but as a significant spinal cord injury. Dr. Pugely performed surgery on Petitioner's spine to stabilize Petitioner's thoracic vertebrae fracture. He said Petitioner had an incomplete spinal cord injury, which could cause major weakness and bowel dysfunction. He said in the surgery he fused from T10 to L3, from two levels above the fracture to two levels below the fracture, using ten screws and two rods. Petitioner subsequently complained of symptoms in his lower legs. Petitioner's spinal injuries were so severe that he had to learn to walk again while in the hospital and in physical rehabilitation, using a walker for several months subsequent to the accident. Petitioner also suffered an approximately five-inch depression in his right upper thigh subsequent to this accident. This depression is unrelated to any scar or wound, and, according to Dr. Pugely, it is either a direct injury to the musculature or a subsequent denervation of the nerves running from the spinal cord leading to muscle which has atrophied.

While Dr. Krause did not believe Petitioner had suffered a serious nerve injury as a result of this accident, he did not testify to any expertise in regard to spinal injuries, he principally treats lower leg injuries, as well as upper extremity injuries, not spinal injuries. He did not examine Petitioner while he was recovering from his spinal surgery, in fact, he never examined Petitioner, he only reviewed medical records. Dr. Krause's opinions in regard to Petitioner's spinal injuries and subsequent nerve injuries and muscle weakness are therefore given little weight.

The medical records note Petitioner's having voiced ongoing symptoms in both legs, right greater than left, including numbness, tingling, pain, and pins and needles. Petitioner also suffered from bilateral leg weakness, again, right greater than left. His physical therapist provided him a knee brace because his right leg would give out on him.

In regard to the fall where Petitioner injured his right ankle and foot, Petitioner explained that he went out onto his deck to get some fresh air, went down five steps to a landing, and then decided to go down an eight foot grading to a lower patio. He did so while holding onto some latticework attached to his deck, and holding his cane, taking short steps down the grade, with his left leg leading him. He said he lost his balance and could not control his legs. There was a nine-inch step near some other stones and a little retaining wall, and he tried to catch his balance, but he had to step down, and when he did so, he broke his foot. Petitioner Exhibit 24, the photograph of the stone Petitioner was standing on when he slipped and fell to the patio floor, shows two stones stacked one on the other, in an area with smaller rounded stones and leaves. Petitioner testified that this was the area where he stepped down onto flat ground, and fell. Petitioner testified he had taken the photo himself the day prior to the hearing.

Petitioner's first treatment for the right ankle and foot injury was the next day, when he had a previously scheduled appointment with Dr. Pugely. Dr. Pugely x-rayed the right foot and ankle, diagnosed a minimally

displaced fibular fracture, placed Petitioner in a boot, and referred him to Dr. Femino, who saw him on February 9, 2022, about eight weeks after Petitioner suffered a nondisplaced fibula fracture. Dr. Femino testified that earlier x-rays had indicated Petitioner had a stable ankle fracture, but subsequent x-rays, when he saw him, showed the fracture was displaced further, that the talus had shifted, and the deltoid ligament was compromised. He felt one reason for the ankle getting worse was Petitioner's fractured spine, which he said was like a hand grenade going off in front of the spinal cord at the L1 level, causing a lot of potential for neurologic damage, weakness and sensory abnormalities. He said that when he saw Petitioner, he had hypoesthesia, numbness, in both legs, which was not unusual for a burst fracture, which went all the way to his thigh, meaning it was significant. He said Petitioner had a neuropathic fracture, and his degree of pain would not be like a normal pain sensation, a person with that condition have decreased pain, and "will walk through an injury and then fractures will continue to displace, and that causes bone resorption. He then experienced a loss of stability as he was walking on the injured foot.

Dr. Femino testified that Petitioner's neuropathy was the reason for including a spatial frame or halo with the ankle reconstruction, that in his experience, this is necessary for people with neuropathy to heal properly. He said that after the bones had healed and the frame had been removed, Petitioner was still in a great deal of pain. Dr. Femino testified there was no mechanical reason for this pain, that it was not caused by arthritis or any other anatomical pain generator. He said Petitioner's continued pain was neuropathic, from the spine injury, and the reason for the amputation was this neuropathic pain. This surgery reduced Petitioner's pain a great deal and, once he was provided with a prosthesis, allowed him to ambulate without the aid of a walker, crutches, or, in most cases, a scooter. Petitioner did testify that when performing work on the ground he would simply crawl to perform that work.

When the claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates the condition does not break the causal chain, regardless of whether or not the second accident is work-related. *Vogel v. Illinois Industrial Commission*, 354 Ill. App.3d 780, 290 Ill.Dec. 495, 821 N.E.2d 807, 813 (2005); *Par Electric v. Illinois Workers' Compensation Commission*, 2018 IL App (3d) 170656 WC ¶ 63.

The Arbitrator finds that Petitioner's medical conditions, burst fracture of the L1 vertebrae, trauma to the spinal cord and canal, spinal fusion from T10 through L3, right thigh muscle loss, right fibular fracture and deltoid ligament injury, resulting in a right below-knee amputation, are causally related to the accident of April 15, 2021. This finding is based upon the testimony of Petitioner, the medical records summarized above, and the testimony of Dr. Pugely and Dr. Femino, whose opinions are given great weight. The opinions of Dr. Krause, who never examined Petitioner, only performing a records review, and who has no proven expertise in regard to spinal injuries and their sequelae, are given little weight.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of April 15, 2021, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to credibility, above, are incorporated herein.

The findings in regard to causal connection, above, are incorporated herein.

The Arbitrator finds that all of the bills introduced into evidence in Petitioner's Exhibits 16, 17, 18, 19, and 20 are related to Petitioner's spinal and right leg injuries suffered as a result of the April 15, 2021 accident, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident, and are to be paid pursuant to Sections 8(a) and 8.2 of the Act. This finding is based upon the testimony of Petitioner, the medical records summarized above, the deposition testimony of Dr. Pugely and Dr. Femino, summarized above, and the testimony of Dr. Krause that all of the medical treatment rendered to Petitioner was reasonable.

The Arbitrator further finds that Respondent is entitled to credit for all amounts it has paid on said bills as shown in Respondent Exhibit 2.

In support of the Arbitrator's decision relating to the nature and extent of the injury the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The findings in regard to credibility, above, are incorporated herein.

The findings in regard to causal connection and medical, above, are incorporated herein.

As the accident occurred after September 1, 2011, the nature and extent of the injury must be determined through the five-factor test set out in §8.1b(b) of the Act.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that while the record contains an AMA impairment rating for the low back injury performed by Dr. Pugely, it was based on the **5th Edition** of the Guides to the Evaluation of Permanent Impairment of the AMA, not the **6th Edition**, published in 2007, which is the most current edition of said Guides. Only the latest edition is to be considered, as required by §8.1b of the Workers' Compensation Act, and as such, Dr. Pugely's rating is not considered in this decision. No other permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that at the time of the accident Petitioner was employed as a pipe setter, a member of the laborers union, that he set pipes, including water mains, sewers and storm sewers, a very physical position, and that he *is not*

able to return to work in his prior capacity as a result of said injury. The Arbitrator notes Respondent provided vocational rehabilitation assistance via Ms. Kane-Thaler, but Petitioner did not provide full effort in his efforts to find employment. While Petitioner could not return to his previous heavy laboring position, it is noted that Petitioner is a high school graduate and had received an associates degree prior to his working as a laborer. Petitioner testified to having periods of time, prior to his amputation, when participating in vocational rehabilitation was difficult, when he did not have the ability to go out and look for work. Later, Petitioner said he would take part in the vocational rehabilitation, he would, “thumb through, but * * * (he) didn’t spend eight hours a day like Karen wanted (him) to, * * * but I did a couple hours here and there.” He said he applied for jobs to keep Ms. Kane-Thaler happy. Petitioner said that in April of 2024 he decided he did not want to participate in the rehabilitation program anymore. When asked at arbitration if he would be open to looking for work, or getting a job, if one within his restrictions and pain level were available, Petitioner said he was “still pondering,” “still tossing that around,” “I’m on disability right now,” and “I’m just going to see what happens.” Ms. Kane-Thaler’s reports (Respondent Exhibits 6, 7, 8, 9, and 10) and her testimony that Petitioner would note he did not see the need to look for a job or the need to do computer classes, his not being consistent in following up on job leads she gave him, that, and he his applying for jobs that were in excess of his weight restrictions, with his saying his restrictions were ten to fifteen pounds and his then applying for jobs requiring seventy pounds are not supportive of a valid job search. One of Petitioner’s friends offered to help him get a job at a golf course, but Petitioner testified he wanted to make just as much money (as he had previously), and did not look into it much. Petitioner’s serious injuries and his non-ability to return to his previous employment would be an aggravating factor in regard to his disability, while his invalid job search during vocational rehabilitation would be a mitigating factor in regard to his disability. The Arbitrator therefore gives *moderate* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 45 years old at the time of the accident. Because of Petitioner having a lengthy potential employment period following the date of this injury, the Arbitrator therefore gives *greater* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner’s future earnings capacity, the Arbitrator notes Ms. Kane-Thaler said Petitioner had the potential to make at least minimum wage, and the potential of making a comparable amount as he had before, based on his associates degree and the computer classes that had been offered to him. Because of Petitioner’s failure to participate in a valid job search, the Arbitrator therefore gives *lesser* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes Petitioner’s extremely long and involved medical treatment, which resulted in a five level spinal fusion, neuropathic pain, a subsequent fall and right ankle fracture, and eventual right below-knee amputation. Because of the serious physical injuries incurred as a result of this accident, 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 100% loss of use of the right leg (215 weeks) pursuant to §8(e) of the Act. Petitioner is further awarded 40% of the person (an additional 200 weeks) for loss of trade due to permanent restrictions.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC029607
Case Name	Thomas Stout v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0452
Number of Pages of Decision	29
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 11/13/2025

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 SANGAMON

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

THOMAS STOUT,

Petitioner,

vs.

NO: 23 WC 29607

STATE OF ILLINOIS,
 GRAHAM CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, statute of limitations, casual connection, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2025 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.

23 WC 29607

Page 2

November 13, 2025

CAH/tdm

O: 11/6/25

052

/s/ Christopher A. Harris

Christopher A. Harris

/s/ Maria E. Portela

Maria E. Portela

/s/ Marc Parker

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC029607
Case Name	Thomas Stout v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 2/7/2025

/s/ Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 4, 2025 4.16%

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



February 7, 2025

/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**

Thomas Stout
 Employee/Petitioner

Case # **23** WC **29607**

v.

Consolidated cases: _____

State of IL / Graham Correctional Center
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield, Illinois**, on **December 30, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10/16/2023**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$79,255.00**; the average weekly wage was **\$1,524.13**.

On the date of accident, Petitioner was **49** years of age, ***married*** with **2** dependent children.

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

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

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

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

ORDER

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

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

Respondent shall pay Petitioner compensation that has accrued from September 17, 2024 through December 30, 2024, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay Petitioner permanent partial disability benefits of \$1,016.08/week for 59.5 weeks, because the injuries sustained caused the 8% loss of Petitioner's left hand, the 10% loss of Petitioner's right hand, and the 10% loss of Petitioner's right arm, as provided in Section(s) 8(e)9 and 8(e)10 of the Act.

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

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

Edward Lee
Signature of Arbitrator

February 7, 2025

FINDINGS OF FACT

This matter came before an Arbitrator appointed by the Commission pursuant to Petitioner's Motion for hearing on all issues. Petitioner has been employed by Respondent, Illinois Department of Corrections/Graham Correctional Center, for 25 years. (T. 6, 7) On November 7, 2023, Petitioner filed an Application for Adjustment of Claim alleging that repetitive duties resulted in injury to his hands, wrists, elbows and arms. (AX2) Respondent disputes accident, notice, causal connection, liability for medical expenses, and the nature and extent of Petitioner's injuries. (T. 4; AX1)

MEDICAL EVIDENCE

On October 16, 2023, Petitioner presented to the office of Dr. Matthew Bradley with symptoms of bilateral upper extremity numbness and tingling, which was worse on the right side than on the left. (PX3, 10/16/23) His symptoms were chronic and woke him at night. *Id.* He reported that he originally saw a physician approximately 10 years prior and was diagnosed with carpal tunnel, placed into braces and given a home exercise program, *Id.* He was eventually told he needed surgery but due to social issues and work, he was unable to get the surgery. *Id.* He reported that his symptoms continued to worsen. *Id.* Currently, Petitioner was trying to sleep with his arms in an extended position and had tried braces and anti-inflammatories but same were not helpful. *Id.*

Dr. Bradley noted that Petitioner had worked for the Illinois Department of Corrections for 24 years, originally as a correctional officer, then in maintenance, and most recently in supply. *Id.* Petitioner had a 24-year-history of work activities which including bar rapping and use of Folger Adams keys. *Id.* Petitioner had previously worked in the garden, which required use of shovels, rakes and tills. *Id.* He was currently working in the clothing room of the supply department, where he lifted boxes weighing 25 to 50 pounds overhead and sometimes climbed ladders to place boxes. *Id.* He performed computer work, including typing and using a mouse with his right hand, and handwriting. *Id.* Dr. Bradley noted that Petitioner owned a side-by-side but did not use this on off-road trails. *Id.* He denied hobbies that Dr. Bradley believed would significantly contribute to the development of carpal tunnel syndrome. *Id.*

On exam of the right elbow, Petitioner had tingling along the ulnar nerve distribution and over the small finger and positive Tinel's testing. *Id.* The left elbow was normal. *Id.* Exam of the right wrist/hand showed numbness and tingling over the median nerve distribution, decreased sensation to light touch over the ulnar nerve distribution, and positive Phalen's and Tinel's testing. *Id.* X-rays of the bilateral hands, wrists and elbows showed no acute fractures or significant degenerative changes. *Id.*

That same day, Petitioner underwent an EMG and nerve conduction study with Dr. Ravi Yadava, which revealed moderate to severe bilateral carpal tunnel syndrome, moderate bilateral Guyon's canal syndrome, and right mild cubital tunnel syndrome. (PX4)

Dr. Bradley reviewed the nerve conduction study and noted that Petitioner had severe carpal tunnel on the right, significant carpal tunnel on the left and mild cubital tunnel on the EMG; however, his physical examination showed more of a moderate symptomatic cubital tunnel. *Id.* Given the severity of Petitioner's condition and his failure of nonoperative treatment,

Dr. Bradley recommended surgical intervention. *Id.* Dr. Bradley opined that the 24 years Petitioner had worked for Respondent had contributed to the development of his carpal and cubital tunnel syndrome. *Id.*

On January 25, 2024, Petitioner had a telehealth appointment with Dr. Bradley for his upcoming right upper extremity surgery wherein Petitioner indicated that his left side was more symptomatic than his right, and he therefore requested that Dr. Bradley perform the left surgery first. *Id.* Dr. Bradley indicated that it was reasonable to do so and same was planned. *Id.*

Petitioner underwent preoperative testing at the Springfield Clinic where it was noted that he had coronary atherosclerotic disease, benign essential hypertension and hyperlipidemia. (PX5)

On February 9, 2024, Petitioner underwent an open left carpal tunnel release with Dr. Bradley. (PX6, 2/9/24) Intraoperatively, the transverse carpal ligament was thickened with chronic inflammatory changes and there was flattening to the underlying median nerve. *Id.* Petitioner was kept off work until February 14, 2024, after which he was returned to desk work only. *Id.*

On February 22, 2024, Petitioner returned to Dr. Bradley and reported that after his left carpal tunnel release, he had almost immediate relief of his pain, numbness, and tingling. (PX3, 2/22/24) He continued to report symptoms on his right upper extremity and surgical intervention was planned. *Id.* Petitioner was returned to work with no restrictions. *Id.*

On April 26, 2024, Petitioner underwent an open right carpal tunnel release, open right cubital tunnel release, and a right ulnar nerve transposition. (PX6, 4/26/24) Intraoperatively, the transverse carpal ligament was thickened, causing flattening of the median nerve. *Id.* The cubital tunnel was thickened with a significant amount of adhesions. *Id.* Upon release, the ulnar nerve was unstable. *Id.* Dr. Bradley noted that the ulnar nerve had thinned to approximately one-third in diameter and had slight discoloration. *Id.* Petitioner was kept off work until May 1, 2024, after which he was returned to light duty. *Id.*

On May 9, 2024, Petitioner returned to Dr. Bradley for a preoperative visit and reported that he was doing well except for slight tingling in his small finger, although this was better than it was preoperatively. (PX3, 5/9/24) Petitioner was returned to work with no restrictions. *Id.*

On June 24, 2024, Petitioner had a telehealth appointment with Dr. Bradley, who noted that Petitioner had no complaints in his left upper extremity. (PX3, 6/24/24) On the right side, when Petitioner had begun using his upper extremities more, he developed numbness in his small digit and ring finger and into his palm. *Id.* Dr. Bradley stated that he hoped this would resolve, but given the severity of Petitioner's findings, he might have permanent nerve damage. *Id.* He was not ready to place Petitioner at MMI and instructed him to follow up in six to eight weeks. *Id.*

Petitioner returned to Dr. Bradley on September 19, 2024, and reported some residual tingling in his small finger, but could still feel light touch and could hold a can without difficulty. (PX3, 9/29/24) Dr. Bradley anticipated that this would continue to improve but again noted that there was a possibility of permanent nerve damage. *Id.* He stated that he had nothing further to offer Petitioner medically that would drastically improve his function or symptoms, and therefore placed him at maximum medical improvement. *Id.*

SECTION 12 REPORT AND DEPOSITION OF DR. CRANDALL

At Respondent's request, Petitioner submitted to a Section 12 examination with Dr. R. Evan Crandall on June 18, 2024. (RX3) Dr. Crandall also authored a records review addendum report dated November 22, 2024. Dr. Crandall noted that Petitioner had recently undergone surgery for right and left carpal tunnel and right ulnar neuropathy, and that his surgeries helped him. *Id.* Dr. Crandall noted that Petitioner thought his symptoms began in 2012 and that he had a nerve conduction study at that time which was positive for bilateral carpal tunnel syndrome; however, at that time there was no discussion of surgery. *Id.* He noted that Petitioner did not seek treatment in 2012 because he could not take time off from work due to being a single father. *Id.* Petitioner reported that his symptoms kept getting worse and he decided to "do something about it." *Id.*

He noted that Petitioner had worked for Respondent for 24 ½ years and began his career as a correctional officer. *Id.* He worked as a garden crew supervisor for Respondent between 2013 and 2020, as a maintenance craftsman between 2020 and 2022, and as a supply supervisor in the warehouse between 2022 and 2024. *Id.* Petitioner reported that he supervised the garden crew for seven years, making constant use of tools and equipment, and that as a maintenance craftsman, Petitioner was "always using tools and repairing things." *Id.*

Dr. Crandall reviewed medical records prior and subsequent to Petitioner's injury date, the majority of which were unrelated to Petitioner's carpal and cubital tunnel syndrome. *Id.* Pertinent records included notes from the Springfield Clinic from September 30, 2019, which indicated that Petitioner had cubital and carpal tunnel syndrome for which he had put off surgery. *Id.* Dr. Crandall noted that in December 2020, Petitioner was evaluated for chest pain in the emergency department where he reported that he was on blood pressure medication in the past but had not taken any for some time and had recently been started on same. *Id.* Dr. Crandall noted that the records indicated Petitioner had been a smoker for the past 15 years. *Id.* He noted that in January 2022, Petitioner had left hand pain and swelling after closing a tailgate and that x-rays of his left thumb showed soft tissue swelling, but no fracture or dislocation. *Id.* He noted that Petitioner was evaluated by Dr. Chris Wottowa on September 13, 2023, that it had been 10 years since Petitioner's last visit with Dr. Wottowa, that Petitioner's right side was bothering him more so than his left, and that this was the opposite of what it had been when Dr. Wottowa evaluated him 10 years prior. *Id.* At that time, Petitioner had positive Phalen's bilaterally, and positive Tinel's on the left. *Id.* Petitioner wished to employ conservative care for his hands. *Id.*

The next records Dr. Crandall reviewed were in reference to Petitioner's current claim. *Id.* He noted that Petitioner's preoperative evaluation indicated a prior medical history of a fracture of a metacarpal and scaphoid bone; however, the records did not state which metacarpal or wrist were affected. *Id.* Petitioner reported a prior left elbow fracture which required an ulnar nerve release in order to place pins in the fracture, and Petitioner indicated the pins were later removed. *Id.*

Dr. Crandall noted that Petitioner denied a history of diabetes, thyroid disease, arthritis, or bleeding disorders. *Id.* Dr. Crandall felt that Petitioner had uncontrolled hypertension and was noncompliant with blood pressure medication in 2023 and 2024. *Id.* He noted Petitioner had a history of smoking and switched to nicotine in 2020 after his cardiac surgery. *Id.* He stated that

Petitioner's high BMI and hypertension were known independent causes of carpal tunnel syndrome. *Id.*

Dr. Crandall questioned Petitioner as to what he felt was the cause of his carpal tunnel, and Petitioner wrote that he had consistent use of his hands and arms, that he supervised the garden crew for seven years with constant use of tools and equipment, and that as a maintenance craftsman, he was always using tools and repairing things. *Id.*

Dr. Crandall noted that if Petitioner's history of a positive nerve conduction study in 2012 was correct, his condition pre-existed his work as a garden supervisor and maintenance craftsman. *Id.*

Dr. Crandall stated that Petitioner had carpal tunnel surgery scheduled in 2020 and that same was cancelled due to his cardiac issues, however, in his review of the records, he stated:

The 12-31-20 note of Dr. Muhamad Khan indicated that due to multivessel coronary artery disease, he decided to cancel CT surgery. CT is a common abbreviation for carpal tunnel, but it is never addressed further in the rest of the note, and *there are no records regarding any type of surgery that was scheduled.* [emphasis added] *Id.*

Despite this, Dr. Crandall stated that "The records indicate he had carpal tunnel surgery scheduled in 2020" and opined that Petitioner had surgical level carpal tunnel in at least one extremity prior to his work as a maintenance craftsman and therefore, felt that there was no causal relationship. *Id.* Dr. Crandall noted his desire to review records related to Petitioner's carpal tunnel syndrome that was diagnosed prior to 2020 to provide more details. *Id.* He felt that Petitioner "does not and did not" have any nerve conditions causally connected to a work accident. *Id.*

He did not believe Petitioner's work as a supply room supervisor was hand intensive because Petitioner returned to work approximately 13 days after his carpal tunnel release and ulnar nerve transposition. *Id.*

Dr. Crandall reviewed a job analysis/physical demand analysis from April 2022 authored by Karen Kane-Thaler and stated that the duties of correctional officers performed in multiple positions were considered sedentary to light demand positions. *Id.* He stated that he visited the Graham facility, performed bar rapping, and felt that same was not hand intensive and was not performed more than four hours per day. *Id.* He stated that "the Folgers key" does not require excessive pinch or grip strength. *Id.* He stated that he also opened and closed doors and chuck holes at Graham but did not comment on the force required to perform same. *Id.*

He opined that intermittent tool use would not be an aggravating factor in Petitioner's condition but stated that there could be a causal relationship between Petitioner's condition as an aggravation of pre-existing condition if the maintenance work that he performed from 2020 to 2022 involved four hours of tool usage per day. *Id.*

Dr. Crandall noted that Petitioner's behavior during the exam was appropriate, and he did not detect any behavioral abnormalities. *Id.*

Dr. Crandall's diagnosis was that of surgically treated right and left carpal tunnel syndrome and ulnar neuropathy at the right elbow, and he felt that the treatment he received for same was reasonable. *Id.*

Dr. Crandall testified via deposition on December 10, 2024. (RX2) On direct examination, he testified consistently with his reports. He admitted that five (5) to 10 percent of his practice consisted of performing independent medical examinations. *Id.* at 6. He charges \$1,850 for a medical legal exam, approximately \$1,500 for an addendum, and \$1,895 for depositions. *Id.* at 23. Other than his performance of medical legal examinations, 100 percent of his patients are involved in worker's compensation cases, of which 99 percent are Missouri cases referred by employers, insurers, or nurse case managers. *Id.* at 20. He does not treat patients under public aid or private health insurance. *Id.* at 20.

He testified that he spent 15 minutes with Petitioner during the exam. *Id.* at 29. When asked if he believed Petitioner was honest, Dr. Crandall stated he thought Petitioner believed his position in maintenance might have been hand intensive. *Id.* at 26. He felt that Petitioner cooperated with his exam and that he answered all questions to the best of his ability. *Id.* at 27. He did not detect any signs of symptom magnification or malingering. *Id.* at 27. He admitted that Petitioner did not have diabetes, thyroid disease, arthritis, or bleeding disorders, and that he did not have hobbies that were considered hand intensive. *Id.* at 45, 46

He admitted that Petitioner's reported bilateral upper extremity symptoms after 2012 worsened to the point where he decided to do something about it in 2023. *Id.* at 28, 29. He agreed that carpal and cubital tunnel syndrome could result from hand-intensive, repetitious work and that the conditions can be multifactoral. *Id.* at 29.

He felt that Petitioner's job duties on the garden crew consisted of teaching prisoners "how to work the garden." *Id.* at 30, 31. He stated that this was not a "not a labor position where he is doing the work. The prisoners are doing the work." *Id.* at 30, 31. He admitted that Petitioner showed prisoners how to use the garden tools but he was unsure if Petitioner ever handled vibratory tools. *Id.* at 31. When asked if Petitioner taught prisoners daily while on the garden crew, Dr. Crandall stated, "I don't know. He may be there watching over them telling them what to do. I don't have any specific knowledge to be able to tell you how many shovels full of dirt he turned over." *Id.* at 31.

With respect to Petitioner's work as a maintenance craftsman, Dr. Crandall did not believe Petitioner's job required him to lift anything over 50 pounds and did not believe Petitioner used items such as a pallet jack. *Id.* at 41, 42.

Dr. Crandall was unaware of Petitioner's staff assignment history when he was a correctional officer. *Id.* at 32, 33. Dr. Crandall admitted that, regardless of the facility, he has never opined that a correctional officer's work activities contributed to compression neuropathy. *Id.* at 55.

He stated that he visited Graham Correctional facility last summer, stating, "I held, opened, closed every door I could find and everything they did in about a 2-hour opportunity," wherein he was accompanied by "insurance agents." *Id.* at 12, 13. He stated that he asked to tour Graham Correctional Center because he had "heard these stories so much it seemed fantastical"

and he wanted to see for himself. *Id.* at 47, 48. He did not charge for performing the tour. *Id.* at 47, 48. He stated that there were “5 or 6 staff of insurance people” on the tour. *Id.* at 44.

When asked if treating physicians such as Dr. Bradley or Dr. Greatting had been offered to tour the facility, he stated, “No. I believe that would probably not be done” and stated that he had “never seen the plaintiff’s side to be able to examine the site of the crime, whether it be any factory of any type.” *Id.* at 48, 49. He testified that ergonomic analysis “is always provided by the defense.” *Id.* at 49.

He testified that during his tour of the facility, he unlocked, opened, closed and locked 50 cell doors and did not experience issues with catching, locking, or with the key not working; however, he testified that he performed these activities in an empty housing unit with no inmates. *Id.* at 50. When asked if the doors or locks in the rest of the facility functioned as smoothly as they did in the empty housing unit, he did not know. *Id.* at 50.

He did not know if performing cell extractions required forceful use, and did not think that performing shakedowns or cuffing and uncuffing inmates required forceful use. *Id.* at 41, 42. He considered a grocery store clerk to be a hand intensive job but did not believe that packing and lifting inmate property boxes, pushing/pulling heavy metal doors, or pushing metal carts containing food required forceful use of the upper extremities. *Id.* at 37-39, 41.

He testified that during his tour, he performed cuffing and uncuffing, however, this was performed with an officer and not with inmates. *Id.* 50, 51. He lifted a property box during his tour, but it was not full of property. *Id.* at 51.

He opined that for lifting to contribute to carpal or cubital tunnel, a person would have to exceed the exercise level of a college football player. *Id.* at 36, 37.

When discussing whether the activity of bar rapping was vibratory, he testified that this was a “joke,” “myth,” and “phony,” and that it made him angry, stating, “I don’t like liars.” *Id.* at 51, 52. He testified that “They instructed me what I was supposed to do and that instantly told me these guys are a bunch of liars who made that claim.” *Id.* at 51, 52.

When asked if he believed that the doors, locks, deadbolts, chuck holes and padlocks that Petitioner had to lock and unlock all operated without issue, Dr. Crandall admitted that he did not know; however, he stated “it is a fantasy, it is a fiction that people have come up with that opening these doors and padlocks, doors, sticky locks is hand intensive. It is completely the opposite of what real hard jobs are.” *Id.* at 44.

When asked about using locks several hundred times per day, Dr. Crandall stated that it was “a false statement if someone who was doing that activity claims” that it is hand-intensive. *Id.* at 14. When asked if a job had to have forceful grasping or pressure applied in order to be hand-intensive, Dr. Crandall replied, “You would have to have 20, 100 times more physical activity than what the correctional officers do that I saw in my site visit.” *Id.* at 15, 16. He further stated that if a person makes that claim, “they know it is a false claim.” *Id.* at 15, 16. He stated that if someone reported that being a supervisor or correctional officer was hand intensive, “they know it is not true.” *Id.* at 26. He further stated regarding the physical activities of a correctional officer, “It is so easy.” *Id.* at 15, 16.

When discussing the work activities of a supply supervisor or correctional officer, he opined that no reasonable person could possibly think that the job was hand intensive. *Id.* at 53. Regarding the arbitrators and commissioners who have found that the work of correctional officers at Graham is a causative factor in the development of carpal and cubital tunnel, he stated “They have the right to be wrong and they are.” *Id.* at 53. When asked if Arbitrator Lee was unreasonable for previously finding that the job duties of a correctional officer were causative, Dr. Crandall testified, “All that means is he was convinced by one side more than the other,” that “It doesn’t mean that he is correct,” that “It is like a debate contest,” that “very smart people can be totally wrong,” and that it does not change his opinions “to think that some arbitrator found this position.” *Id.* at 54. To this, Dr. Crandall illustrated that Galileo was put imprisoned for two years because he said the Earth orbited the sun, and that obviously, he was correct. *Id.* at 54.

When asked why Petitioner would think his job duties contributed to his condition, Dr. Crandall testified, “I don’t know if he really thinks it does.” *Id.* at 53. He stated that Petitioner “may believe this maintenance issue is a big deal. I know a lot of my doctor friends don’t even understand how this works. They can’t get causation opinions correct.” *Id.* at 53.

He stated that that four hours of forceful and repetitive activity per day was the “red line” he had to have in order to “convince” him that a person had a hand intensive position, and stated that the garden position, supply supervisor, and correctional position did not have enough hand activity to reach the threshold to cause injuries to the hand. *Id.* at 34, 35. He did not know whether Petitioner’s activities as a maintenance craftsman were an aggravating factor in his condition because he did not have enough information, but admitted that if Petitioner had four hours of activities per day, it could be considered an aggravation of his condition. *Id.* at 17, 18, 33-35, 55, 56.

DEPOSITION OF DR. MATTHEW BRADLEY

Dr. Bradley testified via deposition on November 13, 2024. (PX10) Dr. Bradley is a board-certified orthopedic surgeon. *Id.* at 4. He treats compression neuropathy on an almost daily basis and estimated that he performs three to five compression neuropathy surgeries per week. *Id.* at 8, 9. On direct examination, Dr. Bradley testified consistently with his medical records.

Dr. Bradley testified that he has placed multiple requests to tour Graham Correctional Center, and that he would “absolutely” tour the facility if he was allowed to do so. *Id.* at 37. He testified that there is a significant amount of literature that looks at causes and contributions to the development of carpal tunnel either from manual, mechanical, work-related or medical problems with the patient. *Id.* at 13.

Dr. Bradley testified that he reviewed Petitioner’s job description with him in great detail. *Id.* 21. He reviewed a job site analysis for Graham Correctional Center that was around 260 pages in length and was in relation to multiple different positions. *Id.* at 24. He testified that he has seen quite a few patients from Graham Correctional facility and has a good understanding of what Petitioner’s duties were, but he went over “everything” with Petitioner in great detail in order to clarify what his jobs were over the 24 years of employment. *Id.* at 21.

He testified that Petitioner started off as a correctional officer, then performed garden maintenance, then moved to maintenance, and most recently he worked as a supply supervisor.

Id. at 21, 22. He testified that Petitioner's duties in those positions varied, and included unlocking many doors, bar rapping, utilizing Folger Adams keys, using shovels, rakes, hoes, tillers and tractors, using hand and power tools, fixing things in the facility, painting, repairing equipment, loading, unloading, and emptying boxes, and placing items on shelves and in cubbyholes. *Id.* at 21, 22.

With respect to causation, Dr. Bradley testified that Petitioner's condition dated back 10 years, which would have been when he was a correctional officer. *Id.* at 22, 23. Dr. Bradley felt that the repetitive use of Petitioner's hands as a correctional officer contributed to his condition; however, when he began utilizing tools, shovels, rakes, hoes, and performing maintenance, his symptoms worsened to the point where he came in for evaluation. *Id.* at 16, 17, 22, 23. Therefore, Dr. Bradley felt that all of Petitioner's activities contributed to the development of his carpal and cubital tunnel syndrome. *Id.* at 22, 23.

Dr. Bradley testified that tobacco use can be a risk factor for the development of compression neuropathy, but it is not one of the most causative risk factors, and that whatever effect tobacco was had on the development of carpal tunnel would cease when tobacco use is stopped. *Id.* at 53, 54. He testified that Petitioner's BMI was elevated but that this was not one of the major contributing factors to compression neuropathy. *Id.* at 26. When asked if an individual's occupational history could be discounted as a contributing factor if the person had non-occupational risk factors, Dr. Bradley testified:

I actually kind of think it's the exact opposite. I actually think it kind of furthers it. When -- you know, I said earlier, these conditions are usually multifactorial. A lot of things cause them. So if you have medical problems that make your body already susceptible to these things, then it's not going to cause -- it's not going to take as much repetitive use to actually cause these symptoms to come out. Because you're almost predisposed to some degree to developing these. So, you know, certainly if he is a little obese or even if he had some of these other comorbidity factors, you know, I don't think you can write off the 24-plus years of repetitive use and say that that had nothing to do with. *Id.* at 26, 27.

Dr. Bradley was asked if some people simply just develop carpal and cubital tunnel, and explained:

Idiopathic is simply whoever gave them the diagnosis does not know what the cause was. Couldn't identify it. But no, these things don't just -- you don't wake up with it. Something causes it. There's something that causes the ligament to thicken and start pushing on the nerve. Sometimes we know an answer and we have an idea. Sometimes, you know, we don't. And in those cases we term it idiopathic. But no, people don't just wake up with these. There is something that causes this. *Id.* at 42, 43.

When asked why Petitioner's condition manifested bilaterally, he testified that Petitioner and many other patients reported using both hands to push and pull cell doors, and he explained that frequently, a patient will develop symptoms in one hand and will begin utilizing the other hand, and develop symptoms in both hands as a result. *Id.* at 45, 46.

With respect to Petitioner's job duties, Dr. Bradley was aware that Petitioner was "pretty hand-on throughout the work," and made significant use of garden tools and equipment. *Id.* at 34, 35. He testified that as a maintenance worker, Petitioner "fixed pretty much anything that needed to be fixed," using hand and power tools. *Id.* at 35. When asked what specific activities contributed to Petitioner's compression neuropathy, Dr. Bradley stated:

Any kind of repetitive use of the hand, and it doesn't necessarily need to be high-force. It doesn't need to be like a jam hammer. But any repetitive use of the hand doing activities just -- some inflammation. And if you keep chronologically inflaming an area, you start developing scar tissues. And the scar tissue is just layer and layer. So this gentleman didn't -- he doesn't have one activity I can look at and say, "It was the utilization of Folger Adams keys. That's what did it." It was more -- he started off as a CO, so a lot of turning on locks, a lot of bar rapping, a lot of pulling on cell doors. And then he transitions over to the gardens. Now he's, you know, opening and closing his hands, gripping rakes, gripping hoes, gripping shovels, utilizing tillers, utilizing mowers. And then he moves over to a maintenance crew. So now he's using screwdrivers, hammers, drills, paintbrushes, painting up and down on walls and ceilings. So it's not one particular activity. It's more the fact that at everything this guy did for 24-and-a-half years, it involved utilizing his hands for a significant portion of his day. *Id.* at 35, 36.

Given the severity of Petitioner's symptoms and his EMG findings, Dr. Bradley did not believe Petitioner would have improved without surgical intervention. *Id.* at 33.

DOCUMENTARY EVIDENCE

A work history timeline completed by Petitioner indicated prior to working for Respondent, he worked at Friendly Chevrolet as a service advisor for one and a half years and at AutoZone for four years in parts sales. (PX8)

He noted that he worked for Respondent for 24-and-a-half years as a correctional officer, correctional maintenance craftsman, and supply supervisor. (PX8) He wrote that his duties involved turning keys and door knobs to open doors, maintaining control and custody of inmates, use of handcuffs and restraints, supervising the garden crew, use of garden tools and equipment, including shovels, rakes, hoes and tillers, supervising maintenance workers, using hand and power tools to repair the facility, painting, repairing equipment, loading and unloading boxes, placing items on shelves and in cubby holes, and using scissors and other tools. *Id.*

A detailed job description completed by Petitioner indicated that as a correctional officer, he performed daily lifting of inmate property boxes weighing 30 to 75 pounds, daily pushing and pulling food carts and carts with inmate property, and turning of keys and door knobs. (PX7)

As garden supervisor, he lifted bags of soil and fertilizers weighing 50 to 75 pounds, loaded tillers weighing 75 to 110 pounds onto a trailer daily, hung up tools above shoulder level daily, and used tools for digging, shoveling, hoeing, weeding and planting the garden. *Id.*

As a maintenance craftsman, he daily lifted items such as a paint bucket, tools and materials for repairs, which ranged from five to over 100 pounds, pushed tool carts with tools

and supplies, performed repairs and painting above shoulder level, used tools, paint brushes, and performed repairs and general maintenance of the facility daily. *Id.*

As a supply supervisor, he lifts boxes of supplies and orders weighing two pounds to 75 pounds daily, pushes pallet jacks and carts with supplies and laundry daily, and gets supplies off or onto shelves above shoulder level. *Id.* He also performs typing, and loads and unloads trucks, pallets of supplies, and shelves daily.

A notice of injury report from October 16, 2023, completed by Petitioner indicated that he had an injury of carpal tunnel and he listed turning keys, general maintenance, supply duties, and use of tools and equipment as the duties he performed at the time of injury. (PX9)

PETITIONER'S TESTIMONY

Petitioner testified that he completed a notice of injury for his employer on October 16, 2023, and also informed his supervisor, John Sabol, about his injury. (T. 37, 38)

Petitioner testified that he is currently employed at Graham Correctional Center as a correctional supply supervisor II and has worked for Respondent for a little over 25 years. (T. 6, 7) He was a correctional officer at Graham for the first 21 years of his employment. (T. 7) Following his tenure as a correctional officer, he was a correctional maintenance craftsman for two years and currently, he has been in correctional supply for two years. (T. 7)

During his time as a correctional officer, he worked in a cell house and had day-to-day interaction with inmates. (T. 7, 8) He worked different positions, including in housing units and segregation, and he ran the garden at the prison for eight years. (T. 8) When he worked in the cell houses, he used his hands and arms daily and performed locking and unlocking of cell doors and padlocks, performed shakedowns, opened property and correspondence boxes, broke up inmate altercations, performed cuffing and uncuffing of inmates, opened chuck holes, unlocked padlocks for shower doors, and escorted inmates. (T. 8, 9) He testified there was "a lot of opening and closing doors, opening and closing padlocks." (T. 9)

He testified that there are different sides of housing units and that the first door you go into from the foyer requires a large Folger Adams key. (T. 9) During his years as a correctional officer, he worked in each of the 15 housing units at the facility. (T. 41, 42) He testified that the wings require a smaller key, and sometimes he had to unlock and lock all the doors in the morning and at night. (T. 9) He was asked if opening a cell door was like opening the door to a house and he responded, "No. No" and explained that they are "a little heavier, a little stiffer." (T. 49) There are 50 cells in a housing unit and two inmates per cell. (T. 10)

If the facility was on lockdown, he had to open the door, feed the individual, and lock the door back up several times per day, and if the inmate needed to go to the medical unit or elsewhere, he had to open the door, take them out, cuff them, and lock the door back up. (T. 10) He testified that the housing units usually required locking and unlocking the doors at least twice per day, and that there was quite a bit of unlocking as well as passing food trays and pushing carts. (T. 10, 11)

He testified that Graham is older facility and has issues with locks and doors sticking, and he has even broken a key off trying to get a door unlocked. (T. 11) He testified that sometimes

the lock requires jiggling the key, moving and sliding it in and out, twisting, turning and jamming it until it turns, and this requires additional force. (T. 11, 12) He testified that locking and unlocking and opening and closing the cell doors usually requires use of both hands and arms, as one hand is turning the key and the other hand is pulling on the door. (T. 12) He testified that even if a door operates properly, they are steel doors and require force to open. (T. 49)

When he worked in segregation, he had to rap the bars on each shift, which required using a metal bar to run across the bars to check if any are loose. (T. 12, 13) He testified that there are bars on three different showers and formerly in a law library, where he had to rap the bars from top to bottom. (T. 12) He testified that if performed correctly, bar rapping takes 20 to 30 minutes, twice per day. (T. 44) He testified that he found a loose bar one time by performing this activity. (T. 13)

He described the actions that are required to escort inmates in segregation to the showers, he testified:

When you have to get an inmate out of a cell to take them to the shower you have to unlock the chuckhole, have the inmate back up to the chuckhole, put his hands through, cuff him – cuff him up, have him step forward, close the chuckhole, then unlock a padlock for the safety bolt, lock that on the door handle. Then you have to take your big Folger Adams key and open the cell door. So every time you open the door you have got to open three different locks. *Id.* at 13, 14.

He further explained that for the inmates to shower, he has to unlock the padlock, slide the bar door over, have the individual go in, close the bar door and lock it back up, remove the inmates cuffs, have him back up to the door and remove the cuffs before he can shower. (T. 15, 16) He testified when they are done showering he must go through the same process in reverse in order to put the inmate back in their cell and “then move onto the next guy and the next guy.” (T. 15, 16) He testified that there are no group showers in segregation, and all inmates must take showers individually. (T. 14) Outside of segregation, two inmates can shower at a time. (T. 14)

He testified that on days the inmates go out into the yard, it is the same process to remove them from their cell. (T. 16, 17) He explained the inmates have to be put in the yard, have their cuffs removed, and when their time is up, they have to be cuffed, the gate must be unlocked, and the same process of putting them back in their cell is performed. (T. 16, 17)

He testified that there are an average of 30 inmates in segregation, but sometimes more depending on if an incident occurs. (T. 17) He testified that segregation is supposed to be rotated every 90 days, but it does not always go that way, and there was a time when he was in segregation for approximately a year straight. (T. 40, 41)

He testified that to shower inmates in general population during lockdown, he had to open the cell door, cuff the inmate, escort them to the shower, uncuff them, and after they shower, cuff them back up and back take them back to their cell. (T. 17)

He testified that the facility goes on lockdown four to five times per year. (T. 17) During COVID, the facility was on lockdown quite a bit, and there was also a staff shortage which

resulted in the facility being locked down. (T. 18) When the facility is on lockdown, it requires greater use of the hands and arms. (T. 18, 19)

Petitioner testified that he has participated in cell extractions, which requires the use of his hands and arms, as he explained that you have to walk in with a shield and attempt to hold the individual against the wall or pin them on the ground, and sometimes you have to physically grab and them to cuff and restrain them. (T. 20) Regarding cuffing, he testified that if there is a fight between inmates, there is “wrestling” involved to get the situation under control, and this requires greater use of force. (T. 21)

For approximately eight years, Petitioner ran the facility’s 10-acre garden, which he testified was “basically like running a little farm.” (T. 22) In this position, Petitioner started seedlings in the greenhouse, taught inmates how to plant them, and testified that they had to “pull rows” because the garden was low lying and they had to “build up the rows to plant.” (T. 22) He testified that teaching the inmates how to perform these activities “absolutely” involved performing the work himself. (T. 23) He used shovels, rakes, hoes, tillers, and tractors. (T. 23) All of the tools and supplies used in the garden were under lock and key and required Petitioner to unlock them. (T. 25, 26) He testified that the tiller and the tractor were older equipment, so he had to perform a lot of repairs on them. (T. 23) In doing so, he used socket and crescent wrenches, and sometimes used a hammer to get bolts out because they would become compacted with dirt. (T. 23, 24)

In the garden position, Petitioner lifted produce, bags of miracle grow, and soil. (T. 24) He testified that they would take the produce to dietary at the facility, as well as donate it. (T. 24) He testified that one year, the garden produced 58,000 pounds of produce. (T. 24) To donate the produce, he had to load the crates onto a truck and deliver them. (T. 25) He testified that a three point hitch was required to put the tiller on the tractor, that the equipment weighed a “couple hundred pounds,” and that he had to “kind of wrestle it around to put the pins in.” (T. 25)

He worked in the garden from January until late October, and when he was not working in the garden, he was working in a cell house. (T. 26)

Petitioner testified that as a maintenance craft craftsman, he repaired “everything that broke.” (T. 26, 27) Some of his duties included cutting expanded metal and welding it so inmates could not pull it off to store contraband. (T. 27) He performed a significant amount of painting, placed ties on fences all the way around the institution, and worked on the washers and dryers. (T. 27) He utilized drills, screwdrivers and paint brushes every day. (T. 27) He performed these activities from approximately 2020 to 2022. (T. 27, 28)

Petitioner testified that he moved from maintenance to supply because he was having issues with his hands, and that at night his hands were numb, tingling and cramping. (T. 28) As a supply supervisor, he testified they always have trucks coming in. (T. 50, 51) He runs the clothing department and every day, they get inmates from other counties and have to give them supplies, and “there is always, always something to do in there” with respect to using his hands and arms. (T. 50, 51)

He testified that around 2013, his family physician ordered a “nerve conductivity test,” informed him he had carpal tunnel, and gave him a splint. (T. 30) He testified that his physician

did not refer him to a specialist or surgeon and did not recommend surgery, as he wanted Petitioner to try the splints first. (T. 30) Petitioner testified that he was able to manage his symptoms with Tylenol and ibuprofen but his symptoms became progressively worse and he saw Dr. Bradley when they had reached the point where his hands were going numb “all the time” and he was dropping objects. (T. 31, 32)

He testified that the surgeries improved his symptoms and he does not have as much cramping, numbness or soreness. (T. 33) Despite the improvements he gained, he still has numbness on his right ring and pinky fingers, and if he uses his hands for long periods they cramp and become sore. (T. 34) He testified that “a lot of grip strength is not there.” (T. 34) He testified that he used to frequently engage in his hobby of woodworking but now only does so approximately once per month. (T. 35) At work, he has to allow himself more time to do things, and when he begins “getting crampy,” he takes a break. (T. 35) He takes Tylenol or ibuprofen almost nightly. (T. 34)

ARBITRATOR’S CREDIBILITY ASSESSMENT

The Arbitrator had the opportunity to observe Petitioner for an extended period of time at Arbitration, and notes that Petitioner’s lengthy testimony was detailed and transparent. The Arbitrator did not detect any attempt to omit information or evade questioning during cross-examination. Further, Respondent’s examiner, Dr. Crandall, did not detect any behavioral abnormalities in Petitioner. (RX3) Lastly, the Arbitrator asked Petitioner several questions for clarification during Arbitration and Petitioner readily answered in a straightforward manner. Therefore, the Arbitrator finds Petitioner to be a credible witness.

CONCLUSIONS OF LAW

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

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

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. In order to better define “repetitive trauma” the Commission has stated that the term “repetitive trauma” should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific force, flexion and vibratory movements requisite in Petitioner’s job. *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013). “[I]n no way can quantitative proof be held as the *sine qua non* of a repetitive trauma case.” *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015).

The Appellate Court’s decision in *Edward Hines Precision Components v. Indus. Comm’n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently “repetitive” to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, “There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma.” *Id.* at N.E.2d 780. Similarly, the Commission noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013),

a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines supra*.

The Appellate Court in *Darling v. Indus. Comm'n* even stipulated that quantitative evidence of the exact nature of repetitive work duties is not required to establish repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure or “dosage” would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Darling*, N.E.2d at 1143. The Court further noted, “To demand proof of ‘the effort required’ or the ‘exertion needed’ . . . would be meaningless” in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma.” *Id.* at 1142. Additionally, the Court noted that such information “*may*” carry great weight “only where the work duty complained of is a common movement made by the general public.” *Id.* at 1142. The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to his employment as a State correctional facility, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

The law also holds that job duties may be varied and yet still repetitive. In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was “varied” but also “repetitive” or “intensive” in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, “while [claimant's] duties may not have been ‘repetitive’ in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative.” *Id.*

The Commission has also recognized that a claimant's employment may not be the only factor in his or her development of a repetitive compressive 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 (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 law requires that a claimant's entire work history be considered. *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48, 53. Due to the cumulative nature of repetitive injuries, courts routinely look back several years beyond the three-year limitations period, even decades, in evaluating a claimant's condition. See *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill.App.3d 915, 917–18, 828 N.E.2d 283, 287 (2005) (over 30 years); *Oscar Mayer*, 176 Ill.App.3d 607, 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).

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, “[A] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury.” *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

Based upon the preponderance of credible evidence, the Arbitrator finds that Petitioner met his burden in proving that he suffered accidental injuries that arose out of and in the course of his employment. In so finding, as noted above, the Arbitrator found Petitioner to be a credible witness.

Petitioner credibly testified to and detailed in writing that the duties he performed throughout his employment with Respondent were hand-intensive, and he explained how his symptoms progressively worsened during his employment. (T. 31, 32) His testimony regarding the job duties was lengthy, detailed, and un rebutted. While Respondent disputes liability for his injuries based on the opinion of Dr. Crandall, for the reasons set forth below the Arbitrator finds the opinion of Dr. Bradley that Petitioner's conditions are causally related to his employment more persuasive than that of Dr. Crandall.

The Arbitrator finds Dr. Crandall to lack credibility primarily for three reasons: 1) his opinions are biased; 2) his opinions are inconsistent with the facts; and 3) his opinions are inconsistent with the law.

On the matter of bias, Dr. Crandall admitted that his practice revolves around workers' compensation cases, and 99 percent of his referrals come to him by means of the defense or their agents. (RX2, p. 20) He discussed his tour of Graham Correctional Center, which he requested because the claims of employees “seemed fantastical” to him, revealing that he had already

formed an opinion before he ever set foot in the building. (RX2, pp. 47, 48) The bias surrounding Dr. Crandall's tour is further demonstrated by the fact that there were five or six "insurance people" that accompanied him on his tour. (RX2, p. 44) Additionally, he did not believe treating physicians would be offered a chance to tour the facility because he has never seen the plaintiff's side be allowed to examine a site, as this right is reserved for the defense, thereby openly acknowledging that he is an agent of the defense. *Id.* at 48, 49. He even referred to the location of the accident as a the "site of the crime." *Id.* At 44.

In the course of testifying, Dr. Crandall repeatedly vilified claimants without basis, and despite the prevalence of compensable cases involving correctional officers, he admitted that he has never once found in favor of a correctional officer in a repetitive trauma claim, regardless of the facility. (RX2, p. 55) The Arbitrator further notes Dr. Crandall's numerous incredible statements, namely, that injured workers with compensable claims are "a bunch of liars," that arbitrators and commissioners are "totally wrong," and that his fellow physicians do not understand causation and "can't get causation opinions correct." (RX2, pp. 51-54) With opinions such as these, it is no wonder that Dr. Crandall referenced the struggles of the father of observational astronomy, Galileo, as Dr. Crandall seems to believe that he, too, bears the burden of being the only person that is correct. *Id.* at 54.

Additionally, the Arbitrator finds Dr. Crandall's remarks regarding correctional officers condescending and exaggeratory, namely, that the physical activities of a correctional officer are "so easy" and that they are "completely the opposite of what real hard jobs are." (RX2, pp. 15, 16, 44) Further, Dr. Crandall claimed that during his tour, he performed "everything they did in about a 2-hour opportunity." *Id.* at 12, 13. The Arbitrator notes that if Dr. Crandall truly performed "everything" that correctional officers do in a two-hour period, this would be an impressive feat indeed. However, the facts belie his exaggerations, as he admitted that the cell doors he opened were in an empty housing unit, that the cuffing he performed was with an officer instead of an inmate, and that the property box he lifted was not even full of property. *Id.* at 50, 51. Therefore, Dr. Crandall's two-hour tour not only lacked the key ingredient of inmate involvement, but also lacked the repetitious schedule and tedious process that correctional officers must undertake, to which Petitioner testified in great detail, in order to effectively perform their duties in the midst of incarcerated individuals.

With regard to the factual evidence, the December 31, 2020, records from Dr. Khan referenced "CT surgery," and although Dr. Crandall remarked that CT surgery is a common abbreviation for carpal tunnel, he admitted that the remainder of the record did not further clarify this, nor was there any other record indicating the type of surgery that was scheduled. The Arbitrator notes that while "CT" could be an abbreviation for carpal tunnel, it is also an abbreviation for numerous other medical conditions, including cardiothoracic issues, which could certainly apply to Petitioner, and therefore, a reference to "CT surgery" does not constitute evidence that Petitioner had carpal tunnel surgery scheduled in or around 2020. Notwithstanding, Dr. Crandall stated that Petitioner had "surgical level carpal tunnel" as if it was a fact, demonstrating that he has no reservations about basing his opinions on his own assumptions involving Petitioner rather than on the evidence.

Further, Dr. Crandall was unaware of Petitioner's staff assignment history when he was a correctional officer. (RX2, pp. 32, 33) He documented that Petitioner reported, in writing, that while on the garden crew, he made *constant use of tools and equipment* and had consistent use of his hands and arms. (RX3) There is no evidence that Dr. Crandall ever reviewed a job description for Petitioner's post as garden supervisor, nor does Dr. Crandall reference any evidence that rebuts Petitioner's description of the duties he performed in that position. Yet, Dr. Crandall testified that Petitioner's position in the garden was "not a labor position where he is doing the work. The prisoners are doing the work." (RX2, pp. 30, 31; RX3) Again, Dr. Crandall's incorrect assumptions, which he presented to the court as though they were uncontested facts, are contrary to the evidence and credible testimony.

The Arbitrator further notes Dr. Crandall's bizarre reply when asked why Petitioner would think that his job duties contributed to his condition, wherein he stated, "I don't know if he really thinks it does." (RX2, p. 53) His comments are in direct opposition to what he noted in his report, namely, that Petitioner wrote that his symptoms occurred from consistent use of his hands and arms during his employment. (RX3)

With respect to Dr. Crandall's opinions weighed against the law, the Arbitrator notes that he did not believe that Petitioner's job duties were causative of his compression neuropathies, as he stated that he had carpal tunnel in 2012, and this predated his work as a maintenance craftsman. (RX3) However, the law holds that an employee's entire work history be taken into account when determining causality. *PPG Indus, supra*.

Moreover, Dr. Crandall opined that for lifting to contribute to carpal or cubital tunnel, a person would have to exceed the exercise level of a college football player, and that it would take "20, 100 times" more physical activity than what correctional officers do to qualify as hand-intensive activity. (RX2, pp. 15, 16, 36, 37) Although Dr. Crandall was conflicted as to whether it would take 20 or 100 times more physical activity to be considered contributory, as noted above, the law does not require quantitative evidence to establish causation. *Darling, supra*.

In the same vein, Dr. Crandall testified that he did not have enough information to determine whether Petitioner's position in maintenance could be causative because he did not know if he used tools for four hours per day. (RX2, pp. 17) This is puzzling, as Dr. Crandall had the opportunity to examine Petitioner, yet evidently did not attempt to obtain this information directly from him. Nevertheless, Dr. Crandall's opinion on quantitative use is refuted by the law and well-established medical concepts. He set his own threshold for injury, which is inconsistent with that of the medical community and a large body of precedent referenced above. He believed that the activity needed to be repetitive and forceful against resistance for a continuous four hours per day; However, the law does not set a specific standard or require a specific threshold be met before a finding of repetitive trauma can be made, as noted above. (RX3; PX2, pp. 34, 35)

With respect to Petitioner's prior diagnosis of carpal tunnel, the Arbitrator notes that Petitioner freely admitted to same, however, neither Dr. Bradley nor Dr. Crandall reviewed Petitioner's prior EMG/nerve conduction study and therefore, the severity of his condition at the time of his prior diagnosis is unknown. Significantly, there is no evidence that he was aware that

his condition was related to work at that time, he credibly testified that he was not referred to a surgeon or recommended for surgery, and he was able to manage his condition with medication and bracing until his symptoms required treatment at the time he presented to Dr. Bradley. (T. 30-32)

With respect to Dr. Bradley's opinions, the Arbitrator notes that they are in stark contrast to Dr. Crandall's. Namely, Dr. Bradley went over "everything" with Petitioner in detail to clarify what his jobs were over his 24 years of employment. (PX10, p. 21) Dr. Bradley was aware of Petitioner's job duties as a correctional officer, garden supervisor, maintenance craftsman and supply supervisor, and specifically mentioned the types of activities in which Petitioner engaged. *Id.* at 21, 22.

Dr. Bradley's explanation regarding causation, namely, that Petitioner's duties as a correctional officer contributed to his condition but that his garden and maintenance duties worsened to the point where he sought treatment and therefore, all of his activities were contributory, is in harmony with the evidence, Petitioner's testimony, and current Illinois law. (PX10, pp. 16, 17, 22, 23; T. 31, 32)

Moreover, the Arbitrator is in agreement with Dr. Bradley in that although Petitioner had comorbidities that may have predisposed him to developing compression neuropathy, his 24 years of employment performing numerous hand-intensive duties cannot be discounted as a contributing factor. (PX10, pp. 26, 27)

Petitioner outlined in writing and credibly testified in great detail as to the extensive activities he performed during his employment with Respondent as a correctional officer working in cell houses and segregation, as garden supervisor where he used tools and equipment and performed repairs on machinery, and as a maintenance craftsman where he utilized hand and power tools, made repairs and painted. (T. 8-28)

The Commission has also previously determined that the duties of a Graham Correctional Officer contributed to the development of compression neuropathy.

In *Shane Walters v. SOI/Graham Corr. Ctr.*, the Commission concluded that the claimant's work for Respondent for over 31 years performing activities at multiple corrections facilities, including Stateville and Graham, were contributing factors the development of his bilateral carpal and cubital tunnel syndromes. *Walters v. SOI/Graham Corr. Ctr.*, 24 I.W.C.C 0352 (2024) Though the claimant had comorbid risk factors of elevated BMI, age, thyroid dysfunction, and hypertension, the Commission agreed that his ill-being was "multifactorial", and his job duties such as daily opening doors with Folger Adams keys, cuffing and uncuffing inmates, moving property boxes, and bar rapping were a causative factor not to be dismissed. Although the claimant was promoted to Major by the time he was transferred to Graham Correctional Center, he testified that he continued to use his hands and arms to lock and unlock cells and gatehouse doors. *Id.* He noted that the condition of the locks made them difficult to operate. *Id.* Although the Respondent disputed such a connection based on the opinion of its examiner who purportedly toured the facility, the Commission noted that his opinion was inconsistent with the credible body of evidence and the law. *Id.* It was noted that Respondent's

examiner was also provided with “misleading information”. *Id.* The Commission thus agreed that the preponderance of the evidence supported a finding of repetitive trauma and even modified and increased the Arbitrator’s permanent partial disability award. *Id.*

In *Michael Dunn v. SOI/Graham Corr. Ctr.*, the Commission concluded that the claimant’s 23-years history of working for the Department of Corrections contributed to his development of bilateral carpal and cubital tunnel syndromes. *Dunn v. SOI/Graham Corr. Ctr.*, 24 I.W.C.C. 0353 (2024) He spent 19 of his 23 years working at Graham Correctional Center, and though the majority of his time was spent working as a Correctional Officer, the last two (2) years prior to his manifestation date were spent working as a Correctional Sergeant. *Id.* He testified that working as a sergeant entailed performing all the same duties as an officer with the added responsibility of writing and/or completing reports. *Id.* While Respondent’s examiner deemed the claimant’s conditions idiopathic or the sole result of comorbid risk factors of diabetes, hypertension, and elevated body mass index, the examiner failed to consider the claimant’s work history, and the Arbitrator and the Commission found the opinion of the claimant’s treating physician that his employment was a contributing factor to his condition of ill-being. *Id.* The Commission again agreed that the existence of other contributing factors does not change the contribution made by a claimant’s employment to his or her condition of ill-being. *Id.* The Commission also modified and increased the Arbitrator’s permanent partial disability award. *Id.*

In *Brian Caver v. SOI/Graham Corr. Ctr.*, the Commission again found that the claimant’s work for the Department of Corrections, including the five (5) years he spent at Graham opening doors, padlocks, and food hatches (chuckholes), performing administrative duties, and performing “every job in the prison” as he was promoted from officer to lieutenant, contributed to his development of compression neuropathy. *Caver v. SOI/Graham Corr. Ctr.*, 24 I.W.C.C. 0222 (2024). The claimant reported that his job duties increased significantly during the pandemic, and he had to work many double shifts since the facility was so short-staffed. *Id.* Unlike many other cases, the claimant had no significant comorbid risk factors and still developed repetitive injuries. *Id.* The Commission found the opinion of the claimant’s treating physician more credible than that of Respondent’s examiner in light of the claimant’s credible testimony, the law, and the fact that Respondent’s examiner failed to consider the claimant’s work history or his increased work load as a result of the pandemic. *Id.*

In *Honnies*, the Commission found that the claimant’s work as an officer at Graham was a causative factor in their condition of ill-being even though the claimant suffered from hypertension. *Honnies v. SOI/Graham Corr. Ctr.*, 20 I.W.C.C. 0643 (2020). The Commission also did not demand quantitative proof in contravention of the law. *Id.* although the Section 12 examiner, Dr. Sudekum, attributed the Petitioner’s condition to comorbid risk factors, the Commission found Petitioner’s un rebutted testimony and the opinion of his treating physician more credible. *Id.* The claimant’s treating physician, Dr. Greatting, who opined that Petitioner’s job activities of 23 years accelerated or aggravated his condition, because he had to lock/unlock cells, padlocks, and chuckholes with difficult locks that required a significant amount of force on a daily basis for some 50 cell doors per house worked. *Id.* The Commission noted that the claimant’s hypertension was controlled by medication, he was only minimally obese, and his motorcycle riding was extremely limited and produced very little vibration. *Id.* The Commission

found that the treating physician “had sufficient information regarding Petitioner’s work activities and the other potential contributing factors for him to opine as to causality,” even though the Commission noted that during the cross-examination, “[w]hen interrogated about the specifics of Petitioner’s job duties, Dr. Greatting could not testify as to the exact number of the [locks] Petitioner had to lock/unlock, how many cell doors or chuckholes Petitioner had to lock/unlock, etc.”

Likewise, in *Jerry Miller v. SOI, Graham Correctional Center*, 20 I.W.C.C. 0279, 17 IL. W.C. 36143 (Ill. Indus. Com’n May 18, 2020), the Commission noted that the claimant worked at multiple of Respondent’s facilities, most recently Graham, and performed “constant hand-intensive work” while opening locks and doors both as a Correctional Officer and Correctional Lieutenant. *Jerry Miller v. SOI, Graham Correctional Center*, 20 I.W.C.C. 0279, 17 IL. W.C. 36143 (Ill. Indus. Com’n May 18, 2020).

In *James Wines v. SOI/Graham Corr. Ctr.*, 23 I.W.C.C. 0180, the Commission awarded penalties and fees against Respondent, because Respondent failed to pay benefits - even though its Section 12 examiner in that case, Dr. James Emanuel, found causal connection existed between the claimant’s repetitive job activities at Graham facility and the claimant’s repetitive injuries in both his initial report and his addendum report authored after he reviewed the job site analysis provided to him by Respondent. *James Wines v. SOI/Graham Corr. Ctr.*, 23 I.W.C.C. 0180. Dr. Emanuel “opined that Petitioner’s job duties as a correctional officer substantially aggravated and contributed to the diagnosis of bilateral carpal tunnel syndrome and cubital tunnel syndrome.” *Id.*

Petitioner worked as a Correctional Officer at Graham for over two decades. (T. 6, 7) Based upon the above law, the evidence, and the credible opinion of Dr. Bradley, the Arbitrator finds that he met his burden in establishing that his accidental repetitive injuries are causally related to his employment.

Issue (E): Was timely notice of the accident given to Respondent?

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.

Respondent disputes notice but not the manifestation date. The Arbitrator notes that Petitioner was diagnosed with carpal tunnel approximately 10 years prior to seeing Dr. Bradley. (T. 30) There is no evidence, however, that Petitioner knew or should have known that his condition was related to his employment at the time of his previous diagnosis.

As noted above, the manifestation date for a repetitive injury can be set as the date an employee became aware of the relation between a physical condition and work by medical consultation, or the date an employee requires medical treatment. Petitioner tolerated his condition and continued to live and work with same; however, his job duties aggravated same to the point where he had no choice but to seek medical treatment. (T. 31, 32) The October 16, 2023 note from Dr. Bradley is the first medical evidence that points to Petitioner's job duties as causative of his condition. (PX3, 10/16/23) The evidence shows that that same day, Petitioner informed his supervisor of his condition and completed an injury report for Respondent. (T. 37, 38; PX9)

Therefore, the Arbitrator finds that Petitioner provided timely notice of his injuries to 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).

Respondent disputes liability for medical expenses based on accident and causation.

Both Dr. Crandall and Dr. Bradley agreed that Petitioner required surgical intervention for his compression neuropathies. Dr. Bradley testified that Petitioner would not have improved without same, and Petitioner testified that the surgeries improved his condition. (RX3; PX10, p. 33; T. 33)

Therefore, pursuant to the above findings on accident and causal connection, the Arbitrator finds that the medical treatment rendered to Petitioner was reasonable and necessary, and that Respondent is liable for payment of the medical expenses as outlined in Petitioner's Exhibit 1.

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

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

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

(ii) **Occupation:** Petitioner is currently employed as a correctional supply supervisor II. (T. 6, 7) He testified that in his position, there is "always, always something to do in there" with respect to using his hands and arms and that he must allow himself more time to do things due to his injuries. (T. 35, 50, 51) The Arbitrator places little weight on this factor.

(iii) **Age:** Petitioner was 49 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). The Arbitrator places moderate weight on this factor.

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

(v) **Disability:** As a result of his work-related activities, Petitioner developed bilateral carpal tunnel and right cubital tunnel, which required bilateral carpal tunnel releases, a right cubital tunnel release and right ulnar nerve transposition. (PX3) Despite the improvements gained from his surgery, Petitioner still experiences numbness in his fingers, cramping, soreness, and loss of grip strength. (T. 33, 34) His hobby of woodworking has been adversely affected by his injuries. (T. 35) He testified that he takes over-the-counter medications almost nightly for his symptoms.

Petitioner's testimony is corroborated by the last note from Dr. Bradley, which indicated that Petitioner still had residual tingling and there was the possibility that he had suffered permanent nerve damage. (PX3, 9/29/24) The Arbitrator places significant weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained serious and permanent injuries that resulted in the 8% loss of Petitioner's left hand, the 10% loss of Petitioner's right hand, and the 10% loss of Petitioner's right arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC025122
Case Name	Alicia Branon v. State of Illinois - Warren G. Murray Developmental Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0453
Number of Pages of Decision	18
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Caitlin Fiello

DATE FILED: 11/14/2025

/s/Amylee Simonovich, Commissioner

Signature

20WC025122

Page 1

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)
☐ Modify	☐ PTD/Fatal denied
	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ALICIA BRANON,

Petitioner,

vs.

No. 20WC025122

STATE OF ILLINOIS - WARREN G.
MURRAY DEVELOPMENTAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent State of Illinois - Warren G. Murray Developmental Center herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical and vocational services, temporary total disability, and maintenance, 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 strikes paragraph one of the Order section, as well the final paragraph of page 10 of the Decision, and substitutes for each: "Respondent shall pay directly to the providers the reasonable and necessary medical services as set forth in Petitioner's Exhibit 12, as well as any bills of Diagnostic Imaging Associates, for causally related treatment, at the lesser of the fee schedule or negotiated rate as provided in §8(a) and §8.2 of the Act."

The Commission strikes the phrase "low back" from the first paragraph of page 6, and substitutes "right knee".

20WC025122

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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 July 2, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay direct to the providers the reasonable and necessary medical services as set forth in Petitioner's Exhibit 12 for causally related treatment, at the lesser of the fee schedule or negotiated rate as provided in §8(a) and §8.2 of the Act.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

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.

November 14, 2025

O: 11/04/25

AHS/PS

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC025122
Case Name	Alicia Branon v. State of Illinois – Warren G. Murray Developmental Center
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	Bradley Gillespie, Arbitrator

Petitioner Attorney	David Jerome
Respondent Attorney	Caitlin Fiello, Kenton Owens

DATE FILED: 7/2/2024

/s/ Bradley Gillespie, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 2, 2024 5.155%

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



July 2, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
 COUNTY OF MADISON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Alicia Branon
 Employee/Petitioner

Case # **20** WC **025122**

v. Consolidated cases:

State of Illinois, Warren G. Murray
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Collinsville**, on **5/17/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☒ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ 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, **11/25/19**, 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 **\$16,873.31/24**; the average weekly wage was \$802.08.

On the date of accident, Petitioner was 27 years of age, **married** with **2** dependent children.

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

Respondent shall be given a credit of **\$56,147.91** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and \$0.00 for medical benefits, for a total credit of \$56,147.91.

Respondent is entitled to a credit of \$980.12 under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services of \$61,336.50 as provided in Section 8(a) of the Act pursuant to the medical fee schedule. Respondent shall be provided a credit of \$16,453.47 for amounts paid and \$980.12 under 8(j).

Respondent shall pay lost time benefits from 11/26/19 to 1/3/20; 9/12/20 to 11/5/20; 11/26/20 to 4/10/24 representing 189 3/7 weeks. Respondent shall pay maintenance benefits from 4/11/24 to 5/17/24, representing 4 4/7 weeks.

Respondent is required to provide vocational rehabilitation services as Petitioner sustained a work-related accident that caused permanent work restrictions which Respondent was unable to accommodate.

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

July 2, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**ALICIA BRANON,****Employee/Petitioner,****v.****STATE OF ILLINOIS/WARREN G.
MURRAY DEVELOPMENTAL CENTER,****Employer/Respondent.**)
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)**Case No.: 20 WC 025122****19(b) DECISION OF ARBITRATOR**

On October 20, 2020, an Application for Adjustment of Claim was filed by Alicia Branon [hereinafter "Petitioner"] alleging that she fell over a concrete curb at a dark location on November 25, 2019, sustaining injuries to her right knee and body-as-a-whole while working for Warren G. Murray Developmental Center [hereinafter "Respondent"] . (Arb. Ex. 2) This matter proceeded to arbitration on May 17, 2024 in Collinsville, Illinois. (Arb. Ex. 1) The following issues were in dispute:

- Causation;
- Medical Bills;
- Average Weekly Wage;
- Temporary Total Disabilit/Maintenance; and
- Vocational Rehabilitation

FINDINGS OF FACT

Alicia Branon, Petitioner, a 31-year-old Mental Health Technician, began working for Murray Development Center in June 2019. As a Mental Health Technician, she helped individuals with mental health issues in their day-to-day activities. (Tr. pp. 13-14)

Petitioner testified the wages noted in Petitioner's Exhibit 15 were accurate and properly reflected that she worked overtime in 14 of the 26 weeks. Petitioner was advised during orientation by a trainee supervisor named Greg as well as another woman that overtime was mandatory while working as a trainee. (Tr. pp. 15-16) Petitioner noted it was her understanding while in training status, it was her duty to perform overtime and she was not allowed to refuse it. However, there were times when she would cover for others and take their overtime, if she knew they had things coming up. However, she did not believe that she could refuse it or she would be fired. (Tr. p. 18)

On November 25, 2019, Petitioner was working at Grape Cottage at midnight when she received an "all-call". An "all-call" is a call when all available staff are called to respond when a

client is having an outburst or could be attacking another client or worker. (Tr. pp. 19-20) When they receive an “all-call,” employees are asked to respond as quickly as possible.

On the date of accident, Petitioner was in a light jog to a vehicle in response to an “all-call” when she tripped and fell over raised concrete. (Tr. pp. 19-20) At the time of this accident, Petitioner was 6 ½-7 months pregnant. As a result, when she fell, she twisted her body to the right to try to protect her unborn child. As a result, she fell landing on a concreted gravel area with her right knee. (Tr. pp. 20-21) Petitioner was able to stand back up but injured her knee with scrapes and rocks stuck in her knee. (Tr. pp. 21-22)

Petitioner advised her employer of the injury on the same date and sought medical treatment. (Tr. pp. 23-24) Petitioner completed a Notice of Injury, wherein she stated that she was outside of Grape Cottage responding to a mass alert drill sounded for Apple Cottage. While jogging to her car, she tripped over raised concrete in the parking lot and fell forward hitting her knee. (Resp. Ex. 1).

Petitioner was initially seen at St. Mary’s Hospital. On November 26, 2019, the medical records recorded Petitioner was seen in the emergency room following a fall at work with indication that she had not felt her baby move since the fall. The emergency room doctor reported a history of Petitioner running in a parking lot to get to a vehicle to respond to a mass alert at one of the cottages when she tripped on a hole in the parking lot and fell. (Pet. Ex. 3)

Petitioner followed up with Dr. Rivera at Clinton County Rural Health and was sent for an MRI at St. Joseph’s Hospital. Petitioner was referred to Dr. Alan Froehling for pain management and to Dr. Corey Solman for an orthopedic consultation. Dr. Froehling recorded Petitioner fell at work and landed on her right knee. She was noted to have tried physical therapy that did not help. Following evaluation, Dr. Froehling provided her with light duty work and a follow-up that was to take place in six weeks. (Pet. Ex. 6)

Petitioner was seen by Dr. Solman on May 27, 2020. (*See* PX 1) Dr. Solman reported a history of the work injury and noted Petitioner had pain in the anteromedial joint line along the medial joint line areas. (PX 1, p. 146) She was noted to have pain with walking activities, kneeling, going up and down stairs, getting in and out of cars, and getting up from a seated position. *Id.* Following his review of the MRI as well as an examination of Petitioner, Dr. Solman diagnosed a right knee posttraumatic contusion and synovitis as well as a possible medial meniscus tear. Dr. Solman recommended surgical repair of the right knee. (PX 1, p. 149)

On January 26, 2021, Petitioner was evaluated by Dr. Timothy Farley for purposes of a Section 12 Evaluation. (RX 2) Dr. Farley agreed with Dr. Solman that Petitioner needed surgery to repair a medial meniscus tear that was caused by the work accident. *Id.*

Petitioner followed up on March 10, 2021, with Dr. Solman. Petitioner was noted to have been approved for surgery but was now 10 weeks pregnant. Dr. Solman noted the surgery would have to be postponed until after the birth of her baby. (PX 1, p. 144)

On January 20, 2022, Petitioner underwent surgery to her right knee at Frontenac Surgery and Spine Care Center for a right medial meniscus tear. The surgery consisted of a right knee arthroscopy with partial medial meniscectomy. (PX 7)

Postoperatively, Petitioner underwent physical therapy at St. Joseph's Hospital. (PX 4). She continued to have pain in the back of her knee and occasional pain to the front of the knee where the medial meniscus was repaired. Additionally, she noted weakness in her knee where it would want to buckle or lock if she stayed in a position for too long. (Tr. p. 27) Petitioner described the symptoms as stiffness to the point where she could not bend it back or straighten it. (Tr. pp. 27-28)

On April 27, 2022, Dr. Solman diagnosed Petitioner with being status post right knee arthroscopy with medial meniscectomy and debridement and posterior popliteal fossa pain. (PX 1, p. 126) As a result of her ongoing problems, Dr. Solman referred her to St. Joseph's Hospital for a new MRI and a doppler ultrasound. (PX 4, *see also* Tr. p. 28)

On June 22, 2022, Dr. Solman noted Petitioner was visibly upset that she cannot walk and do the things that she wanted to do because of the pain in her posterior knee. She was happy with the result from the medial meniscus repair but noted that her popliteal fossa was more debilitating for her. Dr. Solman recommended CT guided aspiration and injection into the area. (PX 1, pp. 119-121)

On October 4, 2022, Petitioner was evaluated a second time by Dr. Farley for purposes of a Section 12 Evaluation. (RX 3) Dr. Farley's report recorded Petitioner was continuing to have ongoing pain, loss of motion, stiffness, and weakness in her right knee. *Id.*

Petitioner confirmed these ongoing symptoms were properly recorded. (Tr. p. 29) Despite these ongoing issues, Dr. Farley released Petitioner to return to work full duty without further recommendations for medical care. (RX 3, Tr. p. 30). Petitioner did not believe she could return to work doing what she was doing before because of the ongoing pain and weakness in her knee. (Tr. pp. 30-31)

In spite of Dr. Farley's opinion, Dr. Solman continued to prescribe physical therapy which Petitioner completed at Apex Physical Therapy. (PX 9) Petitioner also underwent therapeutic injections into her knee by Dr. Ruyle, and then by Dr. Boutwell. (Tr. p. 28, PX 8 & PX 10) Petitioner testified the initial injection did not help at all but the second injection helped her for approximately five days. The pain started to come back slowly. (Tr. pp. 28-29)

By December 20, 2023, Dr. Solman noted Petitioner had been completing physical therapy and was having better strength and improvement in her pain but was still noticing weakness in her quadricep. Dr. Solman recommended further physical therapy as well as continued off work status. (PX 2, pp. 14-16)

On January 17, 2024, Dr. Solman evaluated Petitioner and noted ongoing pain in the popliteal fossa area medially when she puts direct pressure on it, such as sitting in a chair and when she uses a foam roller at physical therapy. Petitioner noted if she walked for prolonged periods of

time or too many stairs, she would have increased pain within her knee. Dr. Solman noted Petitioner's condition was unchanged. (PX 2, pp. 10-12)

By March 6, 2024, Dr. Solman referred Petitioner for a functional capacity evaluation. On March 15, 2024, Petitioner completed the functional capacity evaluation at Apex Physical Therapy. (Tr. p. 31) Petitioner described the test as being 2 ½ to 3 hours long wherein she was asked to do squats, carry a box of weights, stand on 1 foot, and climb stairs. Petitioner noted she had problems performing these activities. (Tr. p. 32)

Following the functional capacity evaluation, Dr. Solman evaluated Petitioner one last time on April 10, 2024. At that time, Petitioner was noted to have intermittent sharp pains over the posteromedial knee where she'd been having it all along. Following his evaluation of the functional capacity evaluation, Dr. Solman limited Petitioner to standing up to 15–20 minutes per hour; not recommending any jumping, squatting, or kneeling so as not to incite pain in the right knee; no stairs or ladder claiming as part of her work activities; and lifting less than 15 pounds frequently and 20 pounds occasionally. These restrictions were deemed permanent in nature. (PX 2, p. 3)

Petitioner was terminated on May 5, 2021, by Respondent via correspondence and therefore, was not offered a position with Respondent within the permanent work restrictions. (PX 13; Tr. p. 33) The correspondence provides no reason for the termination. Petitioner testified she did not believe she could perform all the duties, even if she were released go back to work. Petitioner noted she would not be able to lift patients that could be her size or bigger, push wheelchairs around, walk from cottage to cottage, or help bathe and dress individuals due to the ongoing pain and weakness in her knee. (Tr. pp. 33-34)

On April 23, 2024, Petitioner sent Respondent correspondence requesting vocational rehabilitation services and maintenance benefits. (PX 14) Petitioner also began a self-directed job search, completing multiple Job Seeker Forms. (PX 1, Tr. p. 34) At the time of trial, Petitioner had not yet found a new job and was having difficulties trying to figure out the type of jobs she could do because of her work restrictions. (Tr. pp. 34-35) Petitioner requested the assistance of a vocational expert to help her find new employment within her restrictions. (Tr. p. 35)

Petitioner testified that immediately following her accident, she was taken off work by her doctors until January 3, 2020. She returned to work on January 7, 2020, and continued working light duty until February 20, 2020, then she took off work for maternity leave. (Tr. p. 36) She returned to work light duty on April 15, 2020, and worked until September 11, 2020 on light duty. After September 12, 2020, Respondent did not accommodate the work restrictions as they were denying the work injury. (Tr. p. 37) However, by November 16, 2020, Respondent allowed Petitioner to return to work light duty again as they had reopened the workers' compensation case. (Tr. p. 37) She continued to work light duty until November 25, 2020, but had to stop because Respondent only allowed an injured worker to work 180 days of light duty. (Tr. p. 38) Petitioner remained off work from November 26, 2020, until being placed at maximum medical improvement by Dr. Solman on April 10, 2024. Thereafter, she remained on permanent work restrictions from 4/11/24 up to the date of trial. (Tr. pp. 37-38)

Petitioner testified she sustained a previous injury in 2013 or 2014 when she slipped and fell on ice. At that time, she was evaluated by Dr. Rivera and sent for an MRI in 2014 at St. Joseph's

Hospital. (Tr. p. 22) Petitioner testified she was advised there was no torn meniscus identified at that time. Medical records from St. Joseph Hospital diagnosed there was no evidence of a meniscal tear. (PX 5, p. 36) Petitioner was not recommended for surgery and did not seek any further treatment. (Tr. pp. 22-23) Petitioner testified following that injury, she had no ongoing problems or work restrictions leading up to her work accident. (Tr. p. 23)

Petitioner testified at the time of trial, she continued to have ongoing symptoms in her right knee including pain in the backside of her knee, and occasional pain on the front of her knee where the medial meniscus was surgically repaired. Petitioner describes the pain as being a 3/10 going as high as a 7/10 if she stands for long periods of time; is stuck in the same position for long periods of time; or tries to walk, exercise, or do anything physical on her knee. (Tr. p. 39) Petitioner also described having weakness in her leg to the point that when she stands, she places all her weight on her left foot and tries to elevate her right leg. (Tr. pp. 40-41) Petitioner noted her knee will occasionally lock and still swells from time to time. (Tr. pp. 41-42)

Petitioner testified as a result of this injury, she is unable to run, can only stand for 15 minutes with weight on her right leg, and continues to have problems with weakness on her right side. Petitioner used to play multiple sports, including cheerleading and volleyball all 4 years of high school. Since graduation, she continued to play in activities at least 3 times per week that included sand volleyball, slow pitch softball, and flag football. Petitioner noted she also did CrossFit several times per week. (Tr. pp. 42-43) Petitioner has been unable to perform any of these activities since this work accident. (Tr. p. 43)

Petitioner testified that prior to her work injury, she served in the Air Force Reserves for 6 years. As part of her testing, she had to undergo annual physical fitness testing and had no problems performing these activities. (Tr. pp. 43-44) Petitioner testified at some point she was planning on returning to the Reserves but is unable to do this because she can no longer complete those physical activities. (Tr. p. 44)

Petitioner has 3 children that are ages two, four, and eleven. These children are physically active, playing multiple sports including T-ball, flag football, tackle football, and wrestling. Petitioner testified as a result of the injury to her right knee, she is unable to run around with her children, unable to jump on the trampoline with them, practice football with them, or take them on walks or bike rides. (Tr. p. 45)

On cross-examination, Petitioner testified she did not know why she was terminated. Petitioner testified there were 2 types of overtime with Respondent. This overtime included mandatory overtime and voluntary overtime. (Tr. pp. 49-50) She noted if one of the employees were mandated and couldn't do the shift, she would step in and work their shift. Petitioner testified this occurred on maybe two occasions. (Tr. pp. 49-50)

Petitioner entered into evidence wages for the time period of June 1, 2019, until November 16, 2019. These wages showed regular income without overtime of \$16,873.31 over the period of 24 weeks. However, Petitioner was noted to have overtime income of \$3564.84 during 14 of those weeks. As a result, the average weekly wage without overtime was \$703.05. When overtime was included at straight pay, the average weekly wage increased to \$802.08.

At trial, Petitioner identified Petitioner's Exhibit #12 as being the Medical Bill Summary regarding the treatment for her low back. These medical bills are as follows:

Apex Physical Therapy - \$12,882.84
Dr. Kaylea Boutwell - \$557.40
Clinton County Rural Health - \$1,413.00
Dr. Alan Froehling - \$250.00
Frontenac Surgery & Spine Care - \$9,741.73
Injured Workers' Pharmacy - \$1,732.00
Metro West Anesthesia - \$735.00
Midwest Emergency - \$730.00
Mid America Radiology - \$38.43
Dr. Corey Solman - \$17,860.00
SSM Health - St. Mary's Hospital - \$1,091.10
Dr. Joseph's Hospital - \$12,505.00
True Radiology - \$1,800.00

MEDICAL OPINIONS

Dr. Solman testified about the treatment he provided. He described Petitioner's injury and his diagnoses of a medial meniscus tear. Dr. Solman noted the initial MRI showed increased signal in the medial meniscus that was indicating tear of the meniscus, although not a through tear of the condition. Additionally, Dr. Solman noted there was fluid in the back part of the knee, which could be a small baker's cyst. (PX 1, pp. 12-13) Following the initial evaluation, Dr. Solman diagnosed posttraumatic contusion of the right knee with synovitis as well as a likely deal meniscus tear. (PX 1, p. 14)

Dr. Solman testified the Baker's cyst was caused by the medial meniscus tear. (PX 1, p. 15) Dr. Solman recommended a right knee arthroscopy with debridement of her synovitis, and then either repairing or debriding her medial meniscus tear. (PX 1, p. 16) Dr. Solman testified normally with the Baker's cyst, once the meniscal tear is treated, the cyst decompresses into the joint and the fluid that is involved in the Baker's cyst is sucked out with the shavers that are used at the time of surgery. (PX 1, pp. 16-17)

Dr. Solman testified that on January 20, 2022, he took Petitioner to surgery and intraoperatively, he saw tear of her medial meniscus as well as some thickened synovium which was cleaned up with the shaving device. Dr. Solman testified the intraoperative findings were consistent with the MRI and the onset of symptomology following the work accident. Dr. Solman further testified that intraoperatively, the damage to the medial meniscus was consistent with causing the swelling in the back of the knee that he diagnosed as being a Baker's cyst. (PX 1, pp. 20-21)

Dr. Solman testified that, postoperatively, Petitioner continued to have ongoing pain in the back of her knee, although the meniscus repair was proceeding forward. (PX 1, pp. 22-23) Dr. Solman noted the meniscus attaches to the capsule which is the envelope around the knee while

anything outside of the envelope is considered the popliteal fossa area in the back of the knee. He described when the meniscus tears, some of the fluid can leak into the back of the knee and into the popliteal fossa area and cause pain and discomfort. (PX 1, pp. 23-24) Also, if the patient has meniscus tear or tearing of the capsule around the area of the meniscus, it can cause popliteal fossa pain. As a result, Dr. Solman concluded that the ongoing symptoms in the popliteal fossa were consistent with the problems following this accident. (PX 1, pp. 25 & 27)

Moreover, Dr. Solman testified a patient can have a popliteal fossa cyst and when the meniscus is trimmed and the fluid is sucked out at the end of the surgery, some of the fluid can leak back into the area and cause this fullness. Dr. Solman noted he believed the symptoms associated with the popliteal fossa began following his surgery. (PX 1, pp. 29 & 38) He noted by June 22, 2022, Petitioner was continuing to have pain and cystic fluid in the back part of her knee. These findings were consistent with the MRI findings that showed ongoing cystic fluid in the back of the knee. (PX 1, p. 33)

Dr. Solman testified he disagreed with Dr. Farley that the ongoing pain from the popliteal cyst had no relationship to the work injury. Dr. Solman testified when a patient has a medial meniscus tear, fluid can leak out of the knee and cause the popliteal cyst to occur. Further, the surgery was performed to repair or correct the meniscus problem and it usually will cause the cyst to go away and not be a problem postoperatively. Dr. Solman noted the tear was on the medial side, which correlates specifically with the popliteal cyst which is on the similar side. (PX 1, pp. 42-43)

Dr. Solman testified it was significant Petitioner had no symptoms to her knee before this accident; a medial meniscus tear necessitating surgery; and a popliteal cyst with synovial fluid and symptoms found following this accident. Dr. Solman concluded the acute injury with the MRI findings shortly after the accident correlate with the pathological findings that were caused by this injury. (PX 1, pp. 44-45)

Dr. Timothy Farley testified on behalf of Respondent following Section 12 evaluations. (RX 5) Dr. Farley first examined Petitioner on January 26, 2021. He recorded the same description of the work accident. He noted Petitioner had an MRI in 2014 with no evidence of the meniscus tear. Aside from MRI, Dr. Farley noted Petitioner had no prior problems associated with her knee. Following evaluation, Dr. Farley diagnosed a tear of the body of the medial meniscus of the right knee. He concluded this condition was causally related to Petitioner's work accident. (RX 2 & RX 5)

Dr. Farley provided an addendum report on June 14, 2021, without having further evaluation. Dr. Farley concluded he believed Petitioner was capable of returning to work full duty. (RX 4) Dr. Farley admitted he did not complete a physical examination and did not know her symptom complex when he released her to full duty. (RX 5, p. 26)

Dr. Farley performed a second Section 12 evaluation on October 4, 2022. (RX 3) Dr. Farley testified at the time of this visit, Petitioner was still noted to have ongoing pain, loss of motion, stiffness, and weakness within her right knee. She advised Dr. Farley the pain was between 6 and 10 out of 10. (RX 3)

On physical examination, Dr. Farley concluded he saw no swelling within her right knee, full extension of the knee, and a reduction to 140 degrees flexion. Petitioner was noted to have pain with extreme range of motion as well as ongoing mild tenderness of the medial joint line and lateral joint line. Following this evaluation, Dr. Farley diagnosed Petitioner with nonspecific knee pain. He noted she had a small popliteal cyst he considered to be a very common incidental finding. Dr. Farley did not consider it to be a pathological ganglion cyst but simply fluid on the knee. (RX 5)

On cross-examination, Dr. Farley admitted when he examined Petitioner on October 4, 2022, Petitioner still had pain, loss of motion, stiffness, and weakness in her right knee. Dr. Farley admitted all these problems began following this work accident. (RX 5, pp. 27-28) Further, the doctor noted following this accident, the MRI was described by the radiologist as showing a partial tear of the medial head as well as a 13 mm ganglion cyst at the medial at origin. (RX 5, p. 29) Dr. Farley also acknowledged he was not aware of the outcome of the physical therapy or injections into the knee. (RX 5).

CONCLUSIONS OF LAW

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

The Arbitrator incorporates by reference the Findings of Fact set forth in the foregoing paragraphs.

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). 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. *Id.*

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 knee 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 admitted Petitioner sustained an injury to right knee when she fell forward on a concrete surface leading to a medial meniscus tear that required surgery. Post-operatively, Petitioner continued to have ongoing problems with her knee that was not present prior to the work injury.

Dr. Solman testified regarding fluid that built up in the back of the knee in the area of the popliteal fossa. He noted traditionally this fluid is cleaned out as part of the medial meniscal repair. However, in this case, Petitioner continues to have fluid in this area, which is causing ongoing problems and limitations. As a result, Dr. Solman completed a functional capacity evaluation through Apex Physical Therapy, noting the ongoing problems that began following this work accident.

Dr. Farley disagreed Petitioner had ongoing problems associated with the popliteal fossa. Dr. Farley acknowledged Petitioner had no prior problems with her knee leading up to the accident but now had ongoing problems with pain, weakness, and stiffness. However, the doctor still concluded Petitioner was capable of returning to work full duty.

The Arbitrator concludes Dr. Solman's opinion is more persuasive than Dr. Farley's opinion. Dr. Solman was the treating doctor who identified intraoperatively the status of the popliteal fossa and described how the medial meniscal repair can cause fluid to remain in this area. Dr. Solman's opinion is consistent with Petitioner's testimony as well as the FCE's findings. Therefore, the Arbitrator finds and concludes that Petitioner's current condition of ill-being is causally related to the work accident of November 25, 2019. Petitioner's change in physical status and onset of symptoms have necessitated the medical treatment and resulting permanent work restrictions.

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

The Arbitrator incorporates the Findings of Fact and Conclusions of Law set forth in the foregoing paragraphs as if they were set forth in full herein.

Although overtime wages are generally excluded from the calculation of an employee's compensation, an exception exists where overtime hours are consistent and required by the employer. 820 ILCS 305/10; see also *Airborne Express v. Ill. Workers' Comp. Comm'n*, 372

Ill.App.3d 549, 554, 865 N.E.2d 979, 983 (2007). In *Airborne Express*, the court stated overtime, “includes those hours in excess of an employer’s regular weekly hours of employment that he or she is not required to work as a condition of his or her employment OR which are not part of a set number of hours consistently working each week.” *Id.* at 554. (emphasis added).

Further, the Appellate Court noted there are 3 basis on which to include overtime hours into the calculation of average weekly wage. These include 1) he was required to work overtime as a condition of his employment; 2) he consistently worked a number of overtime hours each week; OR 3) the overtime hours he worked was part of his regular hours of employment. *Freesen, Inc. v. Industrial Comm’n*, 348 Ill.App.3d, 1035, 811 N.E.2d 322 (2004) (emphasis added).

In the present case, Petitioner testified that since she was a trainee, she was advised by Orientation Supervisor, Greg, she was required to work overtime hours. Petitioner testified if she did not work these overtime hours, she believed she would have been fired from her employment. Respondent offered no witnesses to contradict Petitioner on this issue.

As a result, Petitioner credibly testified her overtime hours were mandatory and to be considered in determining her average weekly wage. Petitioner entered into evidence paychecks for 24 weeks prior to the accident date. These wages show regular income without overtime of \$16,873.31 over a 24-week period. Additionally, the wage information showed overtime of \$3,564.84 during 14 of the 24 weeks. When overtime is included in straight rate, the total income equates to \$19,249.99 for 24 weeks, creating an average weekly wage of \$802.08. The Arbitrator concludes overtime was mandatory and therefore, overtime wages are to be included thereby creating an average weekly wage of \$802.08.

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 she undertook following this work accident to address the problems in in her right knee that began following this work accident. Petitioner testified to the medical bill summary set forth in Petitioner’s Group Exhibit #12. These medical bills correlate to the medical records confirming their relationship to the work injury to Petitioner’s right knee. Respondent agreed to pay any outstanding balances from Diagnostic Imaging Associates, should a balance exist, as a cyberattack of the facility made it impossible to confirm a balance.

Therefore, the Arbitrator finds and concludes that Respondent shall pay all these reasonable and related medical bills pursuant to the fee schedule. Respondent shall be entitled to a credit for any amounts paid. Respondent shall be entitled to an 8(j) credit for any amounts paid by the group carrier and will hold Petitioner harmless from any claims for reimbursement.

Issue (L): What temporary benefits are in dispute? (TTD/Maintenance)

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.

Petitioner testified immediately following this accident, she was taken off work by her doctors until January 3, 2020. She returned to work light duty on April 15, 2020, and worked until September 11, 2020, on light duty. As of September 12, 2020, Respondent would not accommodate the work restrictions as they were denying the work injury. However, by November 16, 2020, Respondent allowed Petitioner to return to work light duty again as they had reopened the workers' compensation case. She continued to work light duty until November 25, 2020, but had to stop as Respondent only allowed an injured worker to work 180 days of light duty. Petitioner remained off work from November 26, 2020, until being placed at maximum medical improvement by Dr. Solman on April 10, 2024. Thereafter, she remained on permanent work restrictions from April 11, 2024, up to the date of trial.

Petitioner's off work and light duty status is confirmed by the medical records. At various points, the treating doctors either kept her completely off work or provided her with light duty restrictions. As a result, the Arbitrator hereby awards Petitioner temporary total disability benefits for the periods of 11/26/19 to 1/3/20; 9/12/20 to 11/5/20; 11/26/20 to 4/10/24, totaling 189 and 3/7 weeks.

Further, the Arbitrator awards Petitioner maintenance benefits from April 11, 2024, up to the date of trial on May 17, 2024, totaling 4 4/7 weeks. On April 10, 2024, Dr. Solman provided Petitioner with permanent work restrictions consistent with the functional capacity evaluation. Respondent had terminated Petitioner on May 5, 2021, and therefore was not able to accommodate the permanent work restrictions. Petitioner provide Job Seeker Forms confirming her self-directed job search. As a result, the Arbitrator concludes that Petitioner is awarded maintenance benefits beginning April 11, 2024, while she continues her job search.

Issue (O): Is Petitioner Entitled to vocational rehabilitation services?

Section 8(a) requires an employer to pay for an injured worker's necessary physical, mental, and vocational rehabilitation, including the costs and expenses of maintenance. 820 ILCS 305/8(a); *see also Freeman United Coal Mining Co. v. The Industrial Comm'n*, 318 Ill.App.3d 170, 741 N.E.2d 1144 (5th Dist. 2000). The Commission noted that Section 8(a) of the Act gives the Commission the authority to award future vocational rehabilitation services and maintenance benefits to effectuate the remedial purpose of the Act. *Hector Dones v. Kold Construction/Southwest Equip. Mgmt.*, 13 IWCC 0971, 2013 WL 6516479 (Nov. 12, 2013).

Further, under the Commission's regulations, employers, when appropriate, are required to prepare a written assessment of the vocational rehabilitation required to return the injured worker to employment, including the necessity for a plan or program that may include vocational

evaluation and retraining. 50 Ill. Adm. Code 7110.10 (effective June 22, 2006). Vocational rehabilitation may include counseling for job searches, supervising job search programs, and vocational retraining, which includes education at an accredited learning institution. *Beverage v. The Workers' Compensation Comm'n* 2019 ILApp(2d) 180090WC.

In the present case, Petitioner led a very physically active life prior to this work injury. She has now been reduced in the amounts and durations with which she can walk, stand, or lift. She testified to permanent work restrictions which could not be accommodated by Respondent, who had terminated her during her medical treatment. Further, Petitioner testified to having difficulty in finding new areas of employment within her physical limitations.

As a result, the Arbitrator finds and concludes that Petitioner is entitled to vocational rehabilitation services according to the *National Tea* standard. Her work life expectancy indicates retraining is reasonable. Her ability and motivation to engage in retraining are amply shown by her successful completion of a self-directed job search.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC003356
Case Name	Mitchell Robbins v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0454
Number of Pages of Decision	20
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 11/14/2025

/s/Frank Soto, Commissioner

Signature

22 WC 3356

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MITCHELL ROBBINS,

Petitioner,

vs.

NO: 22WC 3356

STATE OF ILLINOIS,
 GRAHAM CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 11, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Illinois Workers' Compensation 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.

22 WC 3356

Page 2

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

November 14, 2025

O: 11/5/25

FJS/mek

046

/s/ Frank J. Soto
Frank J. Soto

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC003356
Case Name	Mitchell Robbins v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 10/11/2024

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



October 11, 2024

/s/ Linda Cantrell, Arbitrator
Signature

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF OCTOBER 8 2024 4.305%

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**

MITCHELL ROBBINS

Employee/Petitioner

v.

STATE OF ILLINOIS/GRAHAM CORRECTIONAL CENTER

Employer/Respondent

Case # **22** WC **003356**

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 **August 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. ☒ 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 7, 2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$47,500.00**; the average weekly wage was **\$915.00**.

On the date of accident, Petitioner was **45** years of age, *married* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$TBD and any and all nonoccupational indemnity disability benefits paid**, for a total credit of **\$TBD and any and all nonoccupational indemnity disability benefits paid**, pursuant to the stipulation of the parties.

Respondent is entitled to a credit of **\$TBD and any and all medical bills paid through its group medical plan** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 1 directly to the medical providers and pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses paid through its group medical plan, as provided in Section 8(j) of the Act.

Respondent shall pay Petitioner temporary total disability benefits of **\$610.00/week** for **6-6/7** weeks, commencing **3/16/22** through **5/2/22**, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all nonoccupational indemnity disability benefits paid.

Respondent shall pay Petitioner permanent partial disability benefits of **\$549.00/week** for **113.90** weeks, because the injuries sustained caused permanent partial disability to the extent of **15%** loss of use of the **right arm**, **10%** loss of use of the **right hand** (190-level), **15%** loss of use of the **left arm**, and **10%** loss of use of the **left hand** (190-level), as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **4/21/22** through **8/29/24**, and shall pay the remainder of the award, if any, in weekly payments.

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

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



OCTOBER 11 2024

Arbitrator Linda J. Cantrell

in his elbows. He took over-the-counter medications to alleviate his symptoms and he did not take time off work.

Petitioner testified that his job duties, including keying and door/chuckhole usage, definitely increased during the COVID pandemic because the inmates were on lockdown. He testified that during the pandemic the officers had to perform the tasks that inmates normally performed, and his duties increased exponentially. Prior to March 2020, inmates assisted with various tasks, including moving property boxes, pushing carts, and handing out food trays. Petitioner had to key doors over hundreds of times a day during the pandemic. He has been assigned to positions where he keyed doors all day long as he performed tasks. Petitioner's pain and numbness, tingling, and waking up at night increased during this period. His hobbies include hunting and fishing and nothing that would cause numbness or tingling.

Petitioner underwent bilateral hand and elbow surgeries by Dr. Bradley that improved his symptoms. He still has tenderness and soreness in his elbows. He experiences pain and sensitivity in his elbows if he rests them on hard surfaces for a prolonged period of time. His grip strength is decreased. Petitioner takes over-the-counter medication three to five days per week. At the end of a work shift he has numbness and a little pain in his elbows.

Petitioner testified that the Section 12 examiner Dr. Stewart was rude to him and spoke so fast he hardly understood him. He disagreed with Dr. Stewart's comment that there were no issues with the locks and keys at Graham. Petitioner testified that his supervisor Major Wright issued a memorandum that ordered the officers to complete a form 434 if locks and keys were not fixed in a timely manner in response to a work order.

On cross-examination, Petitioner testified that he used 34 personal days to undergo surgery and he received pay for those days. He does not have any work restrictions as a result of his injuries, and he has returned to work for Respondent. He has not sought further treatment since being released; however, Petitioner testified that he may have to seek additional treatment. He does not wear any braces or protective devices. Petitioner testified that he feels he is physically able to perform his job duties satisfactorily. He is earning the same pay now as he did at the time of his injury.

Petitioner testified that he does not have gout, rheumatoid arthritis, diabetes, sleep apnea, or hypertension, and his weight has not fluctuated. He has some thyroid issues and occasionally uses tobacco. He uses a crossbow to hunt. Petitioner denied any injuries to his hands and arms prior to his work injuries. Petitioner testified that he has never worked as a Food Service Supervisor II.

Major Trevor Wright testified at arbitration. Major Wright is a shift supervisor at Graham Correctional Center. He was present in the hearing room when Petitioner testified and stated that none of Petitioner's testimony was inaccurate. Major Wright testified that he wrote the memorandum/directive regarding repairing the keys. He testified that it was something he instructed his staff to do because they were having issues getting the keys fixed and he wanted it documented that they were not getting fixed in a timely manner. Major Wright testified that the locksmith is on staff at the facility.

MEDICAL EVIDENCE

On 1/20/22, Petitioner was examined by Dr. Matthew Bradley at Metro East Orthopedics. (PX3) Dr. Bradley noted that Petitioner worked as a correctional officer for more than a decade “with significantly increased repetitive use over the last 1 to 1.5 years”. Petitioner reported increasing numbness and tingling with burning in his bilateral upper extremities. He recently developed weakness and his symptoms were waking him at night over the last 3 to 4 months. Petitioner tried Ibuprofen, ice, heat, and over-the-counter bracing without significant relief in his symptoms. Petitioner reported that his job duties included repetitive lifting of property boxes, loading and unloading of property during searches, applying leg cuffs, and continuous use of keys for doors and restraints. His medical history included thyroid issues and light tobacco usage. Physical examination revealed positive Tinel’s and Phalen’s test over the bilateral hands and positive Tinel’s over the bilateral elbows. X-rays were negative for fractures, dislocation, or significant degeneration or bony lesions. Dr. Bradley ordered EMG studies and urged Petitioner to continue bracing and conservative care. He believed that the chronic repetitive microtrauma that Petitioner experienced over the last year and a half was at least a contributing factor in the development of bilateral carpal and cubital tunnel syndrome.

On 1/20/22, Petitioner underwent an EMG/NCS by Dr. Ravi Yadava at Performance Rehabilitation & Regeneration. (PX4) The study confirmed moderate bilateral carpal tunnel syndrome, mild bilateral cubital tunnel syndrome, and mild left Guyon’s canal syndrome. Petitioner returned to Dr. Bradley in February at which time surgery was recommended as Petitioner had no improvement in his symptoms with conservative treatment.

On 2/20/22, Petitioner completed an Employee’s Notice of Injury. (RX1) He reported pain and numbness in his hands and arms due to years of turning keys/utilizing restraints that manifested on 2/7/22.

On 3/16/22, Dr. Bradley performed a right carpal and cubital tunnel release. (PX6) Intraoperatively, Dr. Bradley found the ulnar nerve was “significantly covered and tethered with inflammation scar tissue and adhesions posterior to the medial epicondyle”, the transverse carpal ligament was thickened, and the median nerve was “significantly flattened as it went to the carpal tunnel”. He placed Petitioner off work until follow up on 3/31/22.

On 3/31/22, Petitioner reported that his right upper extremity symptoms were significantly improved, but his left upper extremity symptoms persisted. (PX3) Dr. Bradley recommended continued use of nonsteroidal anti-inflammatories as needed and home exercises. He released Petitioner to return to full duty work with respect to his right arm on 4/11/22.

On 4/8/22, Dr. Bradley performed a left carpal and cubital tunnel release. (PX6) Intraoperative findings included scar tissue within the elbow, thickening of the transverse carpal ligament, and flattening of the median nerve. Petitioner was placed off work until follow up.

On 4/21/22, Petitioner reported significant improvement in his left arm symptoms. (PX3) He reported elbow soreness for which he took Ibuprofen. Dr. Bradley placed Petitioner at maximum medical improvement and released him to return to full duty work without restrictions

after 5/2/22. He instructed Petitioner to continue home exercises and use anti-inflammatory medication as needed. Dr. Bradley opined that no further medical treatment or procedure would reliably and predictably improve Petitioner's function or pain control. He stated that continued improvement in strength, range of motion, and/or function may improve over time without further intervention.

Dr. Matthew Bradley testified by way of deposition on 8/11/23. (PX9) Dr. Bradley is a board-certified orthopedic surgeon. He reviewed a detailed job description and work timeline prepared by Petitioner. He testified that Petitioner reported a substantial increase in the repetitive use of his upper extremities over the last year to year and a half due to the COVID-19 pandemic which caused symptoms. He noted that Petitioner's symptoms became constant and burning 3 to 4 months before he examined him. Dr. Bradley testified that he has treated a number of correctional officers, lieutenants, and sergeants from Graham, and they all conducted similar job activities. He testified that the type of work performed by officers and like positions is definitely relevant in the development of compression neuropathy, including the amount of time the repetitive activities are performed. He opined that the development of carpal and cubital tunnel syndrome is additive and occurs over months and years.

Dr. Bradley testified that Petitioner's physical exam and EMG/NCS were consistent with bilateral carpal and cubital tunnel syndrome. He opined that surgical intervention was reasonable and necessary for Petitioner's conditions as he failed conservative treatment. He testified that objective intraoperative findings revealed inflammation, scar tissue, and adhesions consistent with chronic repetitive/accumulative carpal and cubital tunnel syndrome. Dr. Bradley did not believe Petitioner's conditions of ill-being would have improved without surgical intervention. He opined that Petitioner's job activities were a causative factor in his compression neuropathies and his need for treatment, though he acknowledged that it was not the only factor as Petitioner had some high blood pressure, a thyroid condition, and he was a little overweight with a BMI of 33. He testified that with those comorbidities combined with a 12-year history of his employment as a correctional officer caused his symptoms of carpal and cubital tunnel syndrome. Dr. Bradley identified repetitive turning of locks, opening prison doors, and moving property boxes as activities that caused Petitioner's conditions.

Dr. Bradley reviewed Dr. Stewart's Section 12 report and disagreed that the cell doors were "easy-to-open" based on his conversations with 40 to 50 other officers who he treated. He testified that the officers told him, and he reviewed a video produced by Respondent showing, the doors often stuck and they had to readjust and bang on the keys and pull forcefully on the doors. He testified that some officers reported that many times they had to use both arms, putting a foot on the door to pull the door open. Dr. Bradley testified that for every one of his patients that were examined by Dr. Stewart, Dr. Stewart's characterization of their job duties could not be further from the truth. He testified that his patients also report that Respondent's job description is a "very minimal description" of the activities they conduct throughout the workday. Dr. Bradley testified that when he released Petitioner at MMI all of his symptoms improved almost completely, but Petitioner had a little soreness around his elbow incision which did not affect his function.

On cross-examination, Dr. Bradley testified that sleep apnea could contribute to the development of carpal tunnel syndrome, but he was not aware if Petitioner had sleep apnea and it would not change his causation opinion if Petitioner did. He testified that the existence of additional contributing factors would not change the fact that Petitioner's employment was also a contributing factor. Dr. Bradley testified that Petitioner's EMG showed some mild Guyon's canal, but it was not causing Petitioner's symptoms and his physical examination was not consistent with Guyon's. He explained that a cubital tunnel release and an open ulnar neurolysis are the same surgical procedures. Dr. Bradley testified that he has asked to tour the Graham facility multiple times and he has not been granted permission.

On 6/21/22, Petitioner was examined by Dr. Patrick Stewart pursuant to Section 12 of the Act. (RX4) He testified by way of deposition on 5/7/24. (RX5) Dr. Stewart is a board-certified general surgeon who specializes in hand and upper extremities. He testified that Petitioner's EMG/NCS results were negative for cubital tunnel syndrome, but he acknowledged that the diagnosis of cubital tunnel syndrome is a clinical diagnosis. Dr. Stewart testified that the diagnosis could be made and surgery performed even if the nerve studies are perceived as normal if there is "a strong feeling and the patient's physical exam is consistent". Dr. Stewart's examination was performed after Petitioner underwent surgery. He did not believe that Petitioner's work duties caused or contributed to Petitioner's conditions because the vast majority of Petitioner's work was as a writ officer and tower officer where he merely transported inmates or had no contact with inmates at all.

Dr. Stewart acknowledged that Petitioner had to lock and unlock cell doors which he described as using a common everyday lock and the doors did not require an excessive amount of force to open or close. He testified that even if Petitioner opened 150 doors per shift, it would amount to 6 to 8 minutes of his entire workday which would not be adequate to cause his conditions. Dr. Stewart testified that Petitioner did not mention that any of the doors were difficulty to open or unlock. He testified that normally a difficult door would be taken out of circulation very quickly by the locksmith on staff. He stated that once the locksmith is notified there is an issue with a door or lock, the problem is addressed very expeditiously. Dr. Stewart testified that there would not be any ongoing excessive number of doors that were hard to open or stuck.

Dr. Stewart testified that half of compression neuropathy cases were idiopathic even without significant risk factors. He opined that Petitioner's conditions were not related to his employment, because he did not believe his job activities required forceful repetitive use of his hands. He believed that the pandemic decreased Petitioner's job duties rather than increased them. Dr. Stewart testified that he could not take a full history of Petitioner's work duties from him, including how often he used keys or if his job duties changed during the pandemic, because Petitioner stopped answering his questions and withheld information from him.

On cross-examination, Dr. Stewart testified that he has examined 30 to 35 Graham Correctional Center employees at Respondent's request. He reviewed and summarized the general description of a Correctional Officer provided by Respondent, which indicated that officers are rotated through all positions. He did not request Petitioner to complete a job description specific to him as a part of the evaluation. Dr. Stewart acknowledged that the only

risk factors Petitioner had for compression neuropathy was an elevated BMI and treatment of his hypothyroidism and hypertension. He acknowledged that Petitioner had no outside hobbies that could have contributed to his condition.

Dr. Stewart testified that he has not reviewed any videos of officers performing their work duties and he never spoke to the locksmith. He visited Graham Correctional Center and personally opened eight to ten cell doors. He believed that all of the doors and locks at the facility opened easily. He did not cuff or uncuff any inmates. He did not know whether any other doors or locks in the facility stuck or caught. He testified that none of the officers he evaluated complained of difficult doors or locks, but they did complain that repetitive keying bothered them, and they related their symptoms to keying.

Dr. Stewart agreed that carpal and cubital tunnel syndrome are cumulative, multifactorial conditions. However, he testified that Petitioner's 12-year work history at Graham was irrelevant and the only pertinent information in determining causation is the job the person is performing when they experienced symptoms. Dr. Stewart admitted that he has never found the work of any correctional officer from any IDOC facility to be a contributing factor to their development of compression neuropathy. Dr. Stewart could not provide an opinion on the reasonableness or necessity of Petitioner's treatment because he did not examine him prior to surgery.

Petitioner prepared a detailed job description dated 5/22/23. (PX7) He indicated that throughout his career, he lifted, pushed, and pulled property boxes that weighed up to 90 pounds anywhere from a few days a week to multiple times per day. He unlocked several hundred doors and chuckholes a day and placed and removed restraints on inmates. Petitioner emphasized the difficulty in operating some of the locks, cell doors, and chuckholes, which at times were several hundred times a day. Petitioner previously prepared a detailed job description on 1/3/22 and indicated he lifted property boxes approximately 8 to 10 times per day that weighed 50 to 80 pounds each. He pushed/pulled heavy steel doors approximately 200 times per day. Petitioner indicated he utilized keys continuously throughout the day to lock and unlock cell doors, approximately 400 times per day, which increased during the COVID pandemic. Petitioner spent approximately one hour a day typing and writing.

Petitioner prepared a work history timeline and indicated he was a Relief Officer for 12 years. (PX8) He worked a variety of positions, including dayroom, control room, personal property, writ team, segregation, and receiving unit "X-House". He indicated that all of the positions required the use of locks and keys on a large scale. His assignment to the control room lasted six months and he never worked in the tower.

Respondent offered into evidence a job description for a Food Service Supervisor II. (RX2) The Arbitrator notes there was no evidence that Petitioner worked in food service at Respondent's facility and Petitioner denied ever having worked in food service.

Petitioner's pre-accident medical records from Springfield Clinic dated 1/6/18 through 2/9/22 were admitted into evidence. Petitioner treated ten times over the four-year period. His pertinent medical history included being overweight (12/19/18), obstructive sleep apnea (11/5/21), hypertension (9/7/21), hypothyroidism (12/7/21), former social smoker (12/27/17),

and uses chewing tobacco (12/27/17). In 2018, Petitioner was taking medication for hypertension and hypothyroidism. Petitioner underwent a home sleep study on 6/4/21 that was consistent with moderate to severe obstructive sleep apnea. Due to the severity of the condition, a trial of airway pressure therapy was recommended. (RX6, p. 14) On 6/22/21, it was noted Petitioner was using a CPAP ordered on 6/17/21. There was no mention of upper extremity symptoms in these records.

CONCLUSIONS OF LAW

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

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

In a repetitive trauma case, issues of accident and causation are intertwined. *Elizabeth Boettcher v. Spectrum Property Group and First Merit Venture*, 99 I.I.C. 0961. In order to better define "repetitive trauma" the Commission has stated that the term "repetitive trauma" should not be measured by the frequency and duration of a single work activity, but by the totality of work activity that requires a specific movement that is associated with the development of a condition. Thus, the variance in job duties is not as important as the specific force, flexion, and vibratory movements requisite in Petitioner's job. *Craig Briley v. Pinckneyville Corr. Ctr.*, 13 I.W.C.C. 0519 (2013). "[I]n no way can quantitative proof be held as the *sine qua non* of a repetitive trauma case." *Christopher Parker v. IDOT*, 15 I.W.C.C. 0302 (2015).

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines supra*.

The Appellate Court in *Darling v. Indus. Comm'n* held quantitative evidence of the exact nature of repetitive work duties is not required to establish a repetitive trauma injury in reversing a denial of benefits, stating that demanding such evidence was improper. *Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 195, 530 N.E.2d 1135, 1142 (1st Dist. 1988). The Appellate Court found that requiring specific quantitative evidence of amount, time, duration, exposure, or "dosage" (which in Petitioner's case would be force) would expand the requirements for proving causal connection by demanding more specific proof requirements, and the Appellate Court refused to do so. *Darling*, N.E.2d at 1143. The Court further noted, "To demand proof of 'the effort required' or the 'exertion needed' . . . would be meaningless" in a case where such evidence is neither dispositive nor the basis of the claim of repetitive trauma." *Id.* at 1142. Additionally, the Court noted that such information "may" carry great weight "only where the

work duty complained of is a common movement made by the general public.” *Id.* at 1142. The evidence shows that Petitioner's job duties involve the performance of tasks distinctly related to his employment as a correctional officer, many of which are not activities that are performed by the general public, let alone ones to which the public would be equally exposed.

The law also holds that job duties may be varied and yet still repetitive. 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 weight-lifting outside of his employment. *See Kent Brookman v. State of Illinois/Menard Corr. Ctr.*, 15 I.W.C.C. 0707 (2015). In the repetitive trauma case of *Fierke*, the Appellate Court specifically held that non-employment related factors that contribute to a compensable injury do not break the causal connection between the employment and a claimant's condition of ill-being. *Id.* at N.E.2d at 849. The Court stated, “The fact that other incidents, whether work related or not, may have aggravated a claimant's condition is irrelevant.” *Id.*

Under Illinois law an injury need not be the sole factor, or even the primary factor of an injury, as long as it is a causative factor. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill.2d 193, 205 (Ill. 2003) [Emphasis added]. Even when other non-occupational factors contribute to the condition of ill-being, “[A] Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury.” *Fierke v. Indus. Comm'n*, 309 Ill.App.3d 1037 (3rd Dist. 2000). Allowing a claimant to recover under such circumstances is a corollary of the principle that employment need not be the sole or primary cause of a claimant's condition. *Land & Lakes Co. v. Indus. Comm'n*, 834 N.E.2d 583 (2d Dist. 2005). Employers are to take their employees as they find them. *A.C. & S. v. Industrial Comm'n*, 710 N.E.2d 837 (Ill. App. 1st Dist. 1999) citing *General Electric Co. v. Industrial Comm'n*, 433 N.E.2d 671, 672 (1982). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

The Arbitrator finds that Petitioner was a credible witness. He completed a detailed job description outlining his duties as a Relief Officer over a 12-year period. Petitioner lifted, pushed, and pulled property boxes that weighed up to 90 pounds anywhere from a few days a

week to multiple times per day. He locked and unlocked several hundred heavy steel doors and chuckholes a day, which increased during the COVID-19 pandemic. He testified that during the pandemic the officers had to perform the tasks that inmates normally performed which increased his duties exponentially. Petitioner emphasized the difficulty in operating some of the locks, cell doors, and chuckholes. He worked a variety of positions, including dayroom, control room, personal property, writ team, segregation, and receiving unit "X-House". He indicated that all of these positions required the use of locks and keys on a large scale. His assignment to the control room lasted six months and he never worked in the tower. Respondent offered into evidence a Position Description for Corrections Food Service Supervisor II; however, Petitioner testified that he never worked as a food service worker. Respondent did not offer any job descriptions into evidence for positions that Petitioner testified he worked.

Petitioner's direct supervisor Major Wright was present in the hearing room when Petitioner testified. He found Petitioner's testimony to be accurate. Major Wright testified that he wrote a memorandum instructing his staff to complete a form 434 if locks and keys were not fixed in a timely manner in response to a work order. He testified that he made the directive because the keys and locks were not getting fixed, and the locksmith was on staff at the facility.

The Arbitrator finds the opinions of Dr. Bradley more credible than those of Dr. Stewart. Dr. Stewart testified that the vast majority of Petitioner's work was as a writ officer and tower officer where he merely transported inmates or had no contact with inmates at all. The Arbitrator finds Dr. Stewart's testimony contrary to the evidence as Petitioner's job duty description and work history were unrebutted at arbitration.

Dr. Stewart testified that the locks and doors did not require an excessive amount of force to open or close and they were all functioning properly. He testified that normally a difficult door would be taken out of circulation "very quickly" by the locksmith on staff. He testified that the locksmith addressed the issue "very expeditiously". Dr. Stewart's testimony directly contradicts Major Wright's testimony that they had repeated issues getting the keys and locks repaired in a timely manner by the locksmith to the point he wanted his staff to document the problem. Dr. Stewart testified he never spoke to the locksmith and provided no basis for his assumptions that the keys and locks were repaired very quickly and expeditiously.

Dr. Stewart testified that he has examined 30 to 35 Graham Correctional Center employees at Respondent's request and none of them complained of difficult doors or locks. He admitted that employees related their symptoms to repetitive keying. Dr. Bradley testified that he has treated 40 to 50 correctional officers and they all reported issues with keys and doors sticking. He reviewed a video produced by Respondent showing the doors often stuck and they had to readjust and bang on the keys and pull forcefully on the doors. Dr. Bradley testified that some officers reported that many times they had to use both arms, putting a foot on the door to pull the door open. Dr. Bradley testified that for every one of his patients that were examined by Dr. Stewart, Dr. Stewart's characterization of their job duties could not be further from the truth. He testified that his patients also report that Respondent's job description is a "very minimal description" of the activities they conduct throughout the workday. The Arbitrator again notes that Respondent did not admit into evidence any of the job positions worked by Petitioner and Major Wright found Petitioner's testimony to be accurate.

Dr. Stewart agreed that carpal and cubital tunnel syndrome are cumulative, multifactorial conditions. However, he testified that Petitioner's 12-year work history at Graham was irrelevant and the only pertinent information in determining causation is the job the person is performing when they experienced symptoms. Dr. Stewart admitted that he has never found the work of any correctional officer from any IDOC facility to be a contributing factor to their development of compression neuropathy. The Arbitrator finds that Dr. Stewart's method of assessing causal connection does not comport with the law. The law requires that a claimant's entire work history be considered. *PPG Indus. v. Illinois Workers' Comp. Comm'n*, 2014 IL App (4th) 130698WC, ¶ 19, 22 N.E.3d 48, 53. Due to the cumulative nature of repetitive injuries, courts routinely look back several years beyond the three-year limitations period, even decades, in evaluating a claimant's condition. See *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill.App.3d 915, 917–18, 828 N.E.2d 283, 287 (2005) (over 30 years); *Oscar Mayer*, 176 Ill.App.3d 607, 608, 126 Ill.Dec. 41, 531 N.E.2d at 174–75 (15 years); *City of Springfield, Illinois v. Illinois Workers' Compensation Comm'n*, 388 Ill.App.3d 297, 300–01, 327 Ill.Dec. 333, 901 N.E.2d 1066, 1069–70 (2009) (approximately 8 years); *Peoria County*, 115 Ill.2d at 527, 106 Ill.Dec. 235, 505 N.E.2d at 1027 (6 years). In contrast, Dr. Bradley considered Petitioner's entire job history and took note of the difficulties Petitioner faced in the course of his employment. The Arbitrator thus finds Dr. Bradley's opinion persuasive and supported by precedent.

The Commission recently affirmed an award in *Shane Walters v. SOI/Graham Corr. Ctr.*, concluding that claimant's work for Respondent for over 31 years performing activities at multiple corrections facilities, including Stateville and Graham, were contributing factors in the development of bilateral carpal and cubital tunnel syndrome. *Walters v. SOI/Graham Corr. Ctr.*, 24 I.W.C.C. 0352 (2024). Though the claimant had comorbid risk factors of elevated BMI, age, thyroid dysfunction, and hypertension, the Commission agreed that his ill-being was "multifactorial", and his job duties such as daily opening doors with Folger Adams keys, cuffing and uncuffing inmates, moving property boxes, and bar rapping were a causative factor not to be dismissed. The claimant noted that the condition of the locks made them difficult to operate. *Id.* Although Respondent disputed such a connection based on the opinion of its examiner who purportedly toured the facility, the Commission noted that his opinion was inconsistent with the credible body of evidence and the law. *Id.* It was noted that Respondent's examiner was also provided with "misleading information". *Id.* The Commission thus agreed that the preponderance of the evidence supported a finding of repetitive trauma and even modified and increased the Arbitrator's permanent partial disability award. *Id.*

In *Michael Dunn v. SOI/Graham Corr. Ctr.*, the Commission recently concluded that the claimant's 23-years history of working for the Department of Corrections contributed to his development of bilateral carpal and cubital tunnel syndrome. *Dunn v. SOI/Graham Corr. Ctr.*, 24 I.W.C.C. 0353 (2024). He spent 19 of his 23 years working at Graham Correctional Center, and though the majority of his time was spent working as a correctional officer, the last two years prior to his manifestation date were spent working as a Correctional Sergeant. *Id.* He testified that working as a sergeant entailed performing all the same duties as an officer with the added responsibility of writing and/or completing reports. *Id.* While Respondent's examiner deemed the claimant's conditions idiopathic or the sole result of comorbid risk factors of diabetes, hypertension, and elevated body mass index, the examiner failed to consider the claimant's work

history. The Commission again agreed that the existence of other contributing factors does not change the contribution made by a claimant's employment to his condition of ill-being. *Id.* The Commission also modified and increased the Arbitrator's permanent partial disability award. *Id.*

In *Brian Caver v. SOI/Graham Corr. Ctr.*, the Commission again found that the claimant's work for IDOC, including the five years he spent at Graham opening doors, padlocks, and chuckholes, and performing administrative duties and "every job in the prison", contributed to his development of compression neuropathy. *Caver v. SOI/Graham Corr. Ctr.*, 24 I.W.C.C. 0222 (2024). The claimant in that case reported that his job duties increased significantly during the pandemic, and he had to work many double shifts since the facility was so short-staffed. *Id.* Unlike many other cases, the claimant had no significant comorbid risk factors and still developed repetitive injuries. *Id.* The Commission found the opinion of the claimant's treating physician more credible than that of Respondent's examiner in light of the claimant's credible testimony, the law, and the fact that Respondent's examiner failed to consider the claimant's work history or his increased workload as a result of the pandemic. *Id.*

In the present case, Dr. Bradley testified that Petitioner had comorbid risk factors, including a thyroid condition, high blood pressure, and he was a little overweight. Petitioner was a former smoker and used chewing tobacco. Petitioner denied having sleep apnea and hypertension; however, his medical records indicate he was diagnosed with hypertension on 9/7/21 and obstructive sleep apnea on 11/5/21. Dr. Bradley testified that even if Petitioner had sleep apnea, it would not change his opinion that Petitioner's 12-year history of employment as a correctional officer contributed to his symptoms of carpal and cubital tunnel syndrome.

Based on the entirety of the evidence and law, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent, and that Petitioner's current conditions of ill-being are causally connected to the 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?

Dr. Stewart testified that he could not opine as to the reasonableness or necessity of Petitioner's medical treatment because he examined Petitioner after he underwent surgery. Based on the above findings as to accident and causal connection, Respondent shall pay the medical expenses outlined in Petitioner's Group Exhibit 1 directly to the medical providers and pursuant to the Illinois medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all medical expenses paid through its group medical plan, pursuant to Section 8(j) of the Act.

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

Petitioner claims entitlement to temporary total disability benefits from 4/20/22 through 5/30/22. However, the medical records support that Petitioner was off work from 3/16/22 through 5/2/22.

Petitioner was placed off work on 3/16/22 when he underwent a right carpal and cubital tunnel release. On 3/31/22, Dr. Bradley opined that Petitioner could return to full duty work on 4/11/22 with respect to his right arm. On 4/8/22, Petitioner underwent a left carpal and cubital tunnel release and was again placed off work. Dr. Bradley released Petitioner at MMI on 4/21/22 and opined he could return to full duty work without restrictions after 5/2/22.

Therefore, Respondent shall pay Petitioner temporary total disability benefits of **\$610.00/week** for **6-6/7 weeks**, commencing **3/16/22** through **5/2/22**, as provided in Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive credit for any and all nonoccupational indemnity disability benefits paid.

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

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

- (i) **Level of Impairment:** Neither party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.
- (ii) **Occupation:** Petitioner continues to work for Respondent as a Correctional Officer performing the same job duties he performed prior to his injury. Petitioner was released to full duty work without restrictions effective 5/3/22. The Arbitrator places some weight on this factor.
- (iii) **Age:** Petitioner was 45 years of age at the time of accident. 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). The Arbitrator places some weight on this factor.
- (iv) **Earning Capacity:** There is no evidence of reduced earning capacity contained in the record. Petitioner was released to full duty work without restrictions and returned to his pre-accident employment for Respondent. He testified that he is earning the same pay now that he did at the time of his injury. The Arbitrator places some weight on this factor.
- (v) **Disability:** As a result of the accident, Petitioner underwent bilateral carpal and cubital tunnel releases. Dr. Bradley noted Petitioner had significant improvement

in his symptoms. He recommended that Petitioner continue taking nonsteroidal anti-inflammatories as needed and perform home exercises. Petitioner was released to full duty work without restrictions. Dr. Bradley noted that Petitioner had some elbow soreness and opined that no further medical treatment or procedure would reliably and predictably improve Petitioner's function or pain control. He stated that continued improvement in strength, range of motion, and/or function may improve over time without further intervention.

Petitioner testified that he experiences pain and sensitivity in his elbows if he rests them on hard surfaces for a prolonged period of time. He testified that his grip strength is decreased. Petitioner takes over-the-counter medication three to five days per week. At the end of a work shift he has numbness and a little pain in his elbows. He testified that he is physically able to perform his job duties satisfactorily. The Arbitrator places greater weight on this factor.

Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 15% loss of use of the right arm, 10% loss of use of the right hand (190-level), 15% loss of use of the left arm, and 10% loss of use of the left hand (190-level), as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 4/21/22 through 8/29/24, and shall pay the remainder of the award, if any, in weekly payments.



OCTOBER 11 2024

Arbitrator Linda J. Cantrell

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25IWCC0455

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025224
Case Name	Rodney Mezo v. C. Howell Construction Inc
Consolidated Cases	24WC025249
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0456
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Scott Goldstein, John Winterscheidt
Respondent Attorney	Stephen Klyczek

DATE FILED: 11/14/2025

/s/Christopher Harris, Commissioner

Signature

DISSENT

/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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RODNEY MEZO,

Petitioner,

vs.

NO: 24 WC 25224

C. HOWELL CONSTRUCTION,

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 notice, causal connection, the reasonableness and necessity of the medical treatment and charges, prospective medical treatment, and temporary total disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 4, 2025 is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 14, 2025/s/ Christopher A. Harris

Christopher A. Harris

CAH/tdm

O: 11/6/25

052

/s/ Maria E. Portela

Maria E. Portela

DISSENT

Upon consideration of the record and the credible testimony of the Petitioner, I find that the Petitioner sustained an accident arising out of and in the course of his employment, that timely notice of the accident was provided, and that his condition is causally related to the accident. I do not find the testimony of the supervisors to be persuasive or sufficient to rebut the Petitioner's testimony. Accordingly, I respectfully dissent from the Majority's decision and would find the claim compensable.

/s/ Marc Parker

Marc Parker

November 14, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025224
Case Name	Rodney Mezo v. C. Howell Construction Inc
Consolidated Cases	24WC025249
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Scott Goldstein, John Winterscheidt
Respondent Attorney	Stephen Klyczek

DATE FILED: 4/4/2025

/s/ Linda Cantrell, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 1 2025 4.07%

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)

RODNEY MEZO

Employee/Petitioner

v.

C. HOWELL CONSTRUCTION, INC.

Employer/Respondent

Case # **24-WC-025224**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Springfield**, on **2/28/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **7/12/24**, 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 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 **\$78,986.44**; the average weekly wage was **\$1,518.97**.

On the date of accident, Petitioner was **46** years of age, *married* with **1** dependent child.

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 **\$0** under Section 8(j) of the Act.

ORDER

Based on the Arbitrator's finding that Petitioner failed to provide Respondent with notice of the accident within the statutory period, as provided under 820 ILCS 305/6(c), the Arbitrator denies all benefits herein.

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

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



APRIL 4 2025

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
 COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RODNEY MEZO,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 24-WC-025224
	)	
C. HOWELL CONSTRUCTION, INC.,	)	Consolidated Case No.: 24-WC-025249
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Springfield on February 28, 2025, pursuant to Section 19(b) of the Act. On 2/21/25, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to his lower back and body as a whole as a result of lifting a concrete form on 7/10/24. (Case No. 24-WC-025249, AX3). On 2/21/25, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to his left shoulder, low back, and body as a whole as a result of slipping while climbing down a rafter on 7/12/24. (Case No. 24-WC-025224, AX4). The cases were consolidated for purposes of trial.

The issues in dispute in Case No. 24-WC-025224 are accident, notice, causal connection, medical expenses, temporary total disability benefits, and prospective medical treatment. The Arbitrator has simultaneously issued a separate Decision in Case No. 24-WC-025249.

TESTIMONY

Petitioner called Respondent's owner and general contractor, Clifton Howell, to testify. His company has been in business for 40 years. Clifton testified that he is on the job almost every day mostly in a supervisory capacity. His office is in a construction trailer located on the job site where he spends 40-50% of his time. Clifton testified that Petitioner was employed by Respondent in July 2024 on a project in Mattoon, Illinois where they were constructing two buildings for the mentally impaired. Respondent assigned 13 to 15 employees on the Mattoon job that were divided into crews with a supervisor on each crew. Clifton testified that he did not specifically work alongside Petitioner.

Clifton testified that when an employee is injured the accident is reported directly to him and he refers it to the insurance company. He does not investigate the accident or have any further involvement. Clifton testified that he first learned that Petitioner was injured in "maybe the second week of September or something". He stated he learned at that time that Petitioner

was off work for one week to have dental work done and he was questioning why people were off work. He stated there was some conversation among the employees about a possible injury, but he had not heard anything prior to that time. Clifton stated he checked with his son, Anthony Howell, who oversaw two other foremen. Anthony told him that Petitioner needed off because he was sick and had a dental appointment. Clifton stated that when he learned of Petitioner's accident, he turned it over to the insurance company. He stated he would not have any way of knowing whether Petitioner did or did not injure his back or shoulder in July 2024. He stated, "He was on the job. I mean it's a possibility anybody could injure something".

Clifton testified that the job was completed in October and Petitioner likely worked through late September. He did not recall the circumstances of Petitioner leaving the job. Clifton recalled a phone conversation with Petitioner wherein he told Petitioner to check with him and not other people or the workman's comp people. He vividly recalled the conversation because he told Petitioner that if he did have a back injury or preexisting, he would not be able to work him. Clifton testified that the text exchange he had with Petitioner identified as PX10 was accurate. He agreed that Petitioner did not walk off the job. Clifton stated he did not document when he had the conversation with Petitioner, but he believed it was late September. After identifying the text message on Petitioner's phone at trial, Clifton agreed that the text message occurred on 10/9/24 when the job was nearing completion. Clifton testified that when he discussed Petitioner's injury with him he understood that Petitioner was referring to his back, and he later heard something mentioned about his shoulder. He did not personally witness Petitioner injure his back or shoulder on the job site.

Clifton believed that Petitioner missed work 2 or 3 times for "maybe a cold or sick or something like that. The only time I remember was the week or week and-a-half when he had the teeth worked on that he had pulled or whatever". He believed that Petitioner took off work for dental work in September, but he was not sure.

Petitioner called Clifton Howell's son, Anthony Howell, to testify. Anthony is part owner of Respondent's business and is the lead foreman. Anthony worked on the Mattoon project in July 2024. He stated that Petitioner worked with Mr. Tomazzoli who was Petitioner's immediate supervisor. Anthony testified that concrete was poured periodically during the duration of the project. He stated that the concrete forms come in all sizes, lengths, and shapes, from 6x2 feet to 2x8 feet. He estimated that the 2x8 forms weighed 80 to 100 pounds each which are removed by hand and stacked on skids. Anthony testified that a truss is the structure that forms and carries a roof load.

Anthony identified the text exchange he had with Petitioner (RX1) and stated Petitioner sent him the picture of himself on a hospital bed and a photo of a diagnostic test around 7/14/24. Petitioner also texted him on 9/6/24 stating he was having trouble with his back. Anthony testified that Petitioner called him in July and told him he had teeth pulled, and that he went to the doctor for his back. Anthony stated he did not discuss with Petitioner at that time how he injured his back. He testified that prior to the text exchange on 7/14/24 Petitioner never mentioned having problems with his back. Anthony testified that the week Petitioner took off to have teeth pulled was the same time Petitioner texted him with the photo and pictures regarding his back. He stated that Petitioner returned to work the following Monday and performed his job

duties. Anthony never noticed Petitioner having difficulty performing his job duties through 9/6/24. He stated that Petitioner never returned to work after 9/6/24 and he never spoke to Petitioner after that date.

Anthony testified that Petitioner's text message dated 9/6/24 was the first time he ever mentioned a work accident. Anthony called Petitioner who stated he had back problems and needed to take care of himself and mentioned workman's comp. Anthony told Petitioner to speak to his father Clifton about it. Anthony testified that Petitioner never mentioned how he injured his back during the phone conversation. He testified that Petitioner never reported an injury to his shoulder or any issues with his shoulder prior to 9/6/24. Anthony never witnessed Petitioner injure his back or shoulder while working. Anthony testified that Petitioner did not work with the concrete forms because that concrete work had been completed towards the end of May before Petitioner was hired. He was not sure what date Petitioner was hired to work the Mattoon job. Anthony testified that Petitioner did handle smaller and lighter sidewalk forms. He denied telling Petitioner to return to work after he was "healed up", but agreed he told Petitioner to talk to his father about worker's comp.

Petitioner testified that he began working at the Mattoon job site in May 2024 as a construction laborer. His job duties included every aspect of building a structure. Petitioner testified that he previously underwent back surgery by Dr. Kitchens in 2006 that did not result in work restrictions. He had not received treatment for his back since being released in 2006 until his work accident in July 2024. Petitioner denied any injuries or treatment to his left shoulder prior to July 2024. Petitioner testified that on 7/10/24 he was lifting a 2x8 concrete form after a fuel containment wall was poured and as he went to turn to throw the form on a skid steer he felt his back pop. He felt sharp pain in his back that prevented him from moving for a second. He estimated that the form weighed 75 pounds. He was working with his supervisor and foreman Paul Tomazzoli who told him not to lift anymore. Petitioner testified that he performed lighter work the rest of the day.

Petitioner testified that he worked on the roof trusses on Friday, 7/12/24. He stated that around 9:00 to 9:30 a.m. he was climbing down the truss to take a break and he slipped. He fell approximately one foot and caught himself with his left arm. He felt his body jerk with his weight when he caught himself. He wrapped his left leg around the truss and was able to climb down the ladder. Petitioner stated he felt like he tore something in his left shoulder and his back pain worsened.

Petitioner testified that he spoke to his co-worker Damon Stevens after his 7/12/24 accident. Petitioner noted at trial that Damon Stevens failed to appear pursuant to subpoena. Petitioner got back on the roof after the break and continued to work. He stated that he was working with his supervisor Mr. Tomazzoli later that day on the trusses and Mr. Tomazzoli asked him to grab a truss lock. Petitioner told him that he did not feel comfortable getting the lock because he slipped and fell that morning and the lock was in an awkward place. Petitioner testified that after working on 7/12/24 he returned home to Murphysboro, Illinois for the weekend and he went to the emergency room on 7/14/24. He stated he reported both work accidents in the emergency room and underwent a CT scan of his lumbar spine. Petitioner texted

a photo of himself and the CT scan results to Anthony Howell while he was at the hospital. Petitioner testified that the emergency room medical records juxtaposed his accident dates.

Petitioner testified that he treated with his primary care physician Dr. Emily Hanson's assistant on 7/15/24 and he reported his work accidents and symptoms. MRIs of his back and shoulder were ordered and he was referred to a surgeon for his lumbar spine. He stated that he did not know why Dr. Hanson's office note only referenced his accident involving the truss and incorrectly stated it occurred on 7/10/24. Petitioner testified that he returned to work for Respondent and his symptoms worsened. He had difficulty in the mornings, but he was fine once he got going, and he did not want to sit or take breaks because his back would get stiff. He stated that toward the end of the job his shoulder flared up.

Petitioner underwent the MRIs on 8/21/24 and returned to Dr. Hanson on 9/6/24 who again referred him to a surgeon. He stated that he wanted to know what was wrong with his back before he filed a worker's compensation claim. He last worked for Respondent on 9/6/24. Petitioner testified that Respondent sent him to SIH Work Care on 9/11/24 who placed him on work restrictions. He did not know why his accident dates are juxtaposed in SIH Work Care's records. Petitioner stated that Respondent did not authorize any treatment for his shoulder.

Petitioner treated with PA Bryant on 10/15/24 who ordered physical therapy. He testified that he did not know why the therapist noted on 11/1/24 that he had been on his feet all day the day before and he did not sleep well due to pain. Petitioner stated he has not worked anywhere since he last worked for Respondent on 9/6/24. Petitioner was not able to treat with his prior surgeon Dr. Kitchens without worker's comp approval. He went to Dr. deGrange on 12/10/24 who recommended back surgery and referred him to a shoulder surgeon. Petitioner was placed off work.

Petitioner testified that he saw Dr. Solman on 2/5/25 for his shoulder who recommended surgery and placed him off work. Petitioner last saw Dr. deGrange for his back on 2/18/25 and he still recommends surgery. He is scheduled to see Dr. Solman again once surgery is approved. He testified that his back is very stiff, and he has constant pain with movement. He has occasional tingling down his right leg. Petitioner has severe pain when he lifts his left shoulder overhead. He stated that his left shoulder is so weak he cannot pull his covers up to his neck at night. He has pain if he accidentally rolls onto his shoulder. His injuries have affected his daily activities, and he desires to undergo both surgeries.

On cross-examination, Petitioner testified that he is right hand dominant. Petitioner agreed that he had a prescription for Oxycodone filled on 6/21/24 by Dr. Hanson. He believed his medication was switched to Oxycodone for his back in 2014. He agreed he was taking Hydrocodone and Oxycodone for back pain. Petitioner testified that his back pain was worse after the work accidents.

Petitioner called Paul Tomazzoli to testify who is employed by Respondent as a foreman. Mr. Tomazzoli has worked for Respondent for 35 years and he was Petitioner's supervisor on the Mattoon project. Mr. Tomazzoli testified that he worked with Petitioner on the trusses and pouring concrete. He testified that Petitioner worked on the roof trusses on 7/8/24 and not on

7/12/24. He testified that there is daily drone footage of the project showing the trusses were set on 7/8/24 and his crew, including Petitioner, started decking on 7/9/24. Mr. Tomazzoli agreed that Petitioner worked on 7/10/24 and 7/12/24.

On cross-examination, Mr. Tomazzoli testified that he worked with Petitioner every day. He testified that Damon Stevens was a laborer that worked on the roof with Petitioner. Mr. Tomazzoli testified that he did not recall Petitioner injuring his back lifting a concrete form onto a skid steer. He could not recall what phase of the project they were in when Petitioner was hired to say if he was moving a concrete form or not. He believed they were finished with the forms when Petitioner was hired in May 2024.

Mr. Tomazzoli testified that around July when Petitioner was getting his teeth pulled, he mentioned getting an MRI for his back. He stated that Petitioner told him it was not job related and it was a previous injury he wanted to get check out. Mr. Tomazzoli testified that Petitioner never told him he was injured on the job, and he never witnessed Petitioner sustain an injury. He testified that Petitioner played bags or corn hole with them every Wednesday night and he never complained about his shoulder or back.

Mr. Tomazzoli testified that when Petitioner was working on the trusses on 7/8/24 he got dizzy, and another employee told him to get down. He testified that Petitioner performed decking on 7/9/24 for 2 to 3 hours and had to get down because he was uncomfortable being on the roof. Petitioner worked from the ground thereafter and handed supplies up to the other employees. Mr. Tomazzoli stated he never saw Petitioner slip when he worked on the roof.

Mr. Tomazzoli testified that the building foundations had been poured by the first week to mid-June 2024. He stated that there was concrete work being performed the week of 7/8/24, but his crew, including Petitioner, was working on framing.

Kain Howell testified on behalf of Respondent. Kain is Clifton Howell's nephew and is employed by Respondent as a carpenter. He worked on the Mattoon project between May and September 2024 and was on the same crew as Petitioner. Kain testified that they started setting trusses on the first building on 7/8/24 which was the only day Petitioner worked on the trusses with him. Kain stated that halfway through the day on 7/8/24 Petitioner became light-headed and had to get off the roof. Petitioner worked from the ground the rest of the day. Kain testified that they started decking on 7/9/24 and Petitioner had difficulty carrying the 4x8 foot sheets of plywood on the roof. Petitioner stopped doing decking that day and worked with the ground crew again. Kain did not believe that Petitioner ever returned to roof work again. He never observed Petitioner slip while on the roof, sustain any work injury, and Petitioner never told him he sustained a work injury.

Kain testified that Petitioner was questioned about an MRI for his back and Petitioner stated it was for a prior back injury. He stated the conversation occurred in the breakroom with him, Mr. Tomazzoli, and Petitioner. Kain stated he had never heard of Petitioner sustaining a shoulder injury.

Jesse Howell testified on behalf of Respondent. Jesse is a carpenter and was employed by Respondent between May and September 2024. He worked with Petitioner toward the end of the project in late August to early September when they were on the same crew putting up siding. Jesse testified that Petitioner never complained of back or shoulder pain that prevented him from putting up siding. He stated that prior to working with Petitioner he saw him on breaks and interacted with him at a campground where they were staying during the project. Jesse testified that Petitioner told him once that his back was hurting and that it was acting up from a previous injury. He believed the conversation took place in August or September. Jesse testified that Petitioner never told him he injured his back or shoulder while working for Respondent, and he never observed Petitioner sustain an injury.

On cross-examination, Jesse testified that Clifton Howell is his uncle. He stated that the siding they were putting up was cement or Hardie board. He estimated that a full-length siding board weighed 15 to 20 pounds.

DOCUMENTARY EVIDENCE

On 7/14/24, Petitioner presented to the emergency room at SIH Memorial Hospital of Carbondale with complaints of pain in his back with radiculopathy, left shoulder, top of foot, and side. (PX1) It was noted that Petitioner worked construction and as he was climbing down from rafters he slipped and almost fell before he caught himself with his left arm. He felt an immediate pull in his left upper extremity. It was also noted that Petitioner twisted towards the right and had some right hip discomfort. He continued working and he felt like he probably pulled a muscle and was taking his pain medication. Two days later he was walking and took a larger than normal step and twisted, causing immediate low back pain extending into his right lower extremity. Petitioner's prior back injury was noted. Petitioner was noted to be 5'10" tall and weighed 271 pounds. Physical examination revealed right lumbar tenderness, full range of motion in all extremities, slight increased pain with straight leg raises, and antalgic gait with decreased weight-bearing on the right. A CT scan of the lumbar spine revealed multilevel degenerative disc disease, moderate-to-severe at L5-S1; multilevel facet arthropathy, severe at L4-5; and moderate bilateral foraminal stenosis at L5-S1. Petitioner was diagnosed with an acute exacerbation of chronic low back pain and an unspecified left shoulder sprain. He was prescribed Cleocin, Toradol, Norflex, and Prednisone, and a neurosurgical referral was provided. Petitioner was instructed to follow up with his primary care physician and use a walker for ambulation. He was also prescribed antibiotics for dental pain and a broken tooth. It was noted that he had a dental appointment scheduled later that week.

On 7/14/24, Petitioner sent a text message to Anthony Howell with a photo of himself sitting on a hospital bed and a photo of the CT scan results.

On 7/15/24, Petitioner followed up with his primary care physician Dr. Hanson. (PX2) She noted that Petitioner fell from roof trusses and caught himself on Wednesday, 7/10/24. He underwent a CT scan in the ER yesterday and he would like to request an MRI. Dr. Hanson noted that Petitioner went to work on Friday [7/12/24] despite having some pain and by the time he drove 2.5 hours it had increased a lot. He went to the ER on Sunday [7/14/24] because the pain was unbearable. Dr. Hanson's record also stated, "Patient states was working on a roof and

fell through the trusses. While in the process of falling, grabbed one with his left arm and briefly caught himself. Had a jarring of right lower extremity. Now having severe pain in right lower back radiating into leg and pain in left shoulder with weakness.” He had pain with standing from a seated position that took his breath away, and tooth pain from a broken tooth. The records also reflected a prior Oxycodone prescription. Dr. Hanson diagnosed intervertebral disc disorder with myelopathy and acute left shoulder pain. She noted no prior history of left shoulder problems. Dr. Hanson ordered an MRI of the lumbar spine and an x-ray of the left shoulder. She referred Petitioner to neurosurgery and prescribed Oxycodone. He was released with no restrictions.

On 7/19/24, Petitioner underwent an x-ray of his left shoulder that was negative.

On 7/22/24, a telephone encounter with Dr. Hanson noted Petitioner’s prescription for Oxycodone was last refilled on 6/21/24. He is prescribed 120 pills to last 30 days. He was prescribed an increased dose of Oxycodone in the emergency room last week, supplying Petitioner will sufficient medication to last until 8/4/24. (PX2, p. 13)

On 7/23/24, a telephone encounter with Dr. Hanson noted Petitioner stated that his normal Oxycodone prescription of 120 pills was to be refilled today. Dr. Hanson noted the 15-day supply prescribed to Petitioner by the emergency room. Petitioner needed to know if he was still going to be able to get his normal refill. (PX2, p. 14) Dr. Hanson advised that it was too early for a refill. (PX2, p. 15)

On 8/21/24, Petitioner underwent an MRI of his left shoulder that revealed marked rotator cuff tendinosis, fraying and partial-thickness tearing of the supraspinatus, infraspinatus, and subscapularis, mild to moderate degenerative changes in the glenohumeral joint with small joint effusion, suspected degenerative changes of the superior posterior glenoid labrum, longhead tendinosis and possible subluxation of the tendon, and marked degenerative changes of the ACV joint with low grade sprain versus synovitis. The lumbar spine MRI revealed multilevel degenerative spondylosis, worse at L5-S1. (PX3)

On 8/22/24 and 8/23/24, several telephone messages were exchanged between SIH and Dr. Hanson regarding whether Petitioner’s treatment was going to be billed to workers comp and if so, authorization for the visit to neurosurgery was required. It was noted, “At patient’s visit with me, he denied work comp claim. Do you know if he changed his mind”. A voice message was left with Petitioner asking if work comp was being used. If so, approval from work comp was needed prior to scheduling with neurosurgery. Petitioner returned the call on 8/23/24 and advised that it was not a work comp case. His appointment with neurosurgery was scheduled on 10/25/24. (PX5, 4-9)

On 9/6/24, Petitioner returned to Dr. Hanson’s office to discuss the MRI results and his workman comp claim. (PX2, p. 22) Petitioner reported he had not decided if “this was going to be work comp or not”. Petitioner reported a lot of pain in his back with numbness into his feet and shoulder pain. Dr. Hanson referred Petitioner to neurosurgery. She noted that Petitioner was currently trying to decide if the injury and further visits were going to be filed as work comp or continued under his primary insurance. She advised him to decide before seeing specialists.

On 9/6/24, Petitioner sent a text message to Anthony Howell stating, “Hey bud I’m having trouble with my back this morning bad so I seen Dr this morning trying to figure out a solution and the S1 and L4 are slipped so bad it’s making my feet numb and very sore...I’ve been pushing myself to work hoping things would get better but it’s not happening. So I need to fix this problem before something worse happens. I was gonna get work comp but didn’t know what I needed to do...I was not wanting to go this route but I have to take care of me.” Petitioner sent a second text to Anthony that day stating, “I texted yr dad after I talked to you to call me when he had time but don’t know if he got text or not.” Anthony Howell replied, “He has been in appointments all day.”

On 9/11/24, Petitioner was seen at SIH Work Care. (PX4) He provided a history of setting trusses at work on 7/10/24, slipped and fell about a foot while climbing down, and caught himself, resulting in shoulder pain since. His pain increased with lifting his shoulder and he had severe, intermittent pain that prevented him from sleeping. Petitioner also reported that on 7/12/24 he was placing concrete forms, stood up and twisted, and felt a pop and immediate pain. Petitioner complained of severe, constant low back pain with numbness and tingling in his right leg, and his left foot felt heavy. He had pain with ambulating. Petitioner was diagnosed with ankylosis of the left shoulder and spondylosis of the lumbar spine; however, it was noted that diagnosis was not yet clear and further testing may be necessary. Petitioner was advised to take ibuprofen and Oxycodone and continue working on range of motion. He was placed on restrictions of no climbing, bending, carrying, or repetitive lifting, no lifting or overhead work, and no repetitive lifting. Petitioner was referred to neurosurgery and orthopedics. (PX4)

It was stipulated that on 10/9/24 Petitioner sent a text message to Clifton Howell that stated, “I never quit working for you I was told to get better by Anthony and to come back to work when I got healed up, then when I asked him about work comp he said to talk to you cause he didn’t know anything about that...so I talked to you and you said that’s what you had work comp for so get it...that you didn’t want to see me paralyzed...then you said I’m probably not gonna be able to hire you back because of liability reasons...and if you don’t mind I need my last paycheck stub because I never got one and a termination date...thanks.” Petitioner also texted, “Apparently work comp lawyer said that you had told them I quit on September 6th and are giving them a hard time getting the ball rolling...I don’t understand how any of this works but I do know I’m struggling and dealing with this is aggravating...I can’t call at the moment.” Mr. Howell replied, “Well just call when you can if you like. I told them nothing about quitting I think that came from lawyer but don’t know that. And way hope thing work out.”

On 10/15/24, Petitioner was examined by physician’s assistant Michael Bryant for a neurosurgical evaluation. (PX5, p. 12) PA Bryant noted Petitioner had an exacerbation of low back pain in July of this year with occasional pain and paresthesia in the anterior thigh to his foot. His pain was worse in the morning and returned with activity. He has left shoulder pain when raising his arm overhead. PA Bryant reviewed the lumbar MRI and noted degenerative changes most notably at L5-S1, an L5-S1 right hemilaminotomy defect and a central disc osteophyte complex versus scar tissue, and mild left foraminal stenosis at L5-S1, with no significant central canal stenosis. Physical examination revealed no focal motor weakness, reflex changes, or neural tension with a negative straight leg raise. PA Bryant recommended physical therapy and pain management with injections. (PX5, p. 12-17)

Petitioner underwent 10 physical therapy sessions at SIH Outpatient Rehab from 10/22/24 through 11/27/24. (PX6) At his initial visit on 10/22/24, the therapist noted Petitioner had low back pain after lifting concrete that was approximately 100 pounds each several times. He also noted Petitioner fell from trusses that caused a tear in his shoulder a few days after. Petitioner reported that he continued working and his pain progressed. The therapist noted that the incident was known but was only reported to work comp when the results of the MRI came out. Petitioner bought an elliptical and tried it yesterday for movement since he has not worked since 9/6/24. Petitioner had radiculopathy in his right foot and pain with weightbearing. Petitioner reported a 50% tear in his left rotator cuff and he was waiting for an appointment with orthopedics. Upon discharge on 11/27/24, the therapist noted that Petitioner was still waiting to see an orthopedist for his shoulder. (PX6, p. 50) He was still waiting on approval for the TENS unit she recommended. Petitioner had only short-term relief from therapy. He stated it felt like a pinched nerve that radiated down his right leg when bending forward. He could not get comfortable at night due to his left shoulder injury. Therapy was put on hold due to limited improvements.

On 12/2/24, Petitioner called PA Bryant's office and advised that therapy did not help his pain. (PX5, p. 18) Dr. Hanson informed Petitioner that PA Bryant wanted him to try injections and a referral had been made. It was noted Petitioner had been transferred to pain management "but they are not ready to schedule this referral at this time. Will reach out to patient when ready".

On 12/10/24, Petitioner was examined by Dr. Donald deGrange for work accidents on 7/10/24 and 7/12/24. (PX7) Petitioner reported that he was working construction and lifted concrete forms while straddling a footing of a new building being erected. As Petitioner turned to put the form down on a skid steer, he felt the onset of very severe low back pain that caught his breath. He stated that the foreman was present and witnessed the incident. Petitioner attempted to work but after several minutes it was apparent he was in significant pain and the foreman told him to discontinue the assignment. His supervisor then directed him to work on decking that was taking place on the roof. Petitioner reported that two days later, on 7/12/24, as he was attempting to go down the ladder at the top of the building that was a good foot below the surface, his foot slipped. He caught himself on a truss with the crook of his left elbow and had an onset of severe shoulder pain. Petitioner completed his work shift that day, but due to severe symptoms he went to the emergency room on 7/14/24. Dr. deGrange noted that Petitioner followed up with his primary care physician after the MRIs were performed, and he reported them to the owner's son, Anthony, who was his foreman. Anthony told him he did not know the steps to take for work comp and referred him to his father who told him to "get yourself fixed". Petitioner reported that he was recommended for physical therapy and injections but the soonest they could schedule him for injections was January. Dr. deGrange noted that 17 years prior Dr. Kitchens trimmed a lumbar disc that completely alleviated Petitioner's right lower extremity symptoms. Petitioner was able to return to work as a welder and recently went into the construction business for more consistent work.

Petitioner continued to have significant low back pain with right lower extremity radiculopathy and severe left shoulder symptoms. He had burning and searing pain in his shoulder with lifting his arm with significant restrictions in movement. He denied any issues

with his left shoulder prior to July 2024. His back pain was moderate to severe with activity, with persistent numbness and tingling in his right leg. Dr. deGrange reviewed the MRIs and diagnosed an L4-5 herniated disc and a left shoulder rotator cuff tear with near full-thickness tear at the supraspinatus and significant tearing of the infraspinatus and subscapularis. He opined that Petitioner's mechanisms of injury were consistent with the pathology shown on the MRIs of the lumbar spine and left shoulder. He opined that the 7/12/24 accident was the direct cause of the left shoulder rotator cuff tears. He found Petitioner's symptoms and examination were consistent with the tears and impingement syndrome. Dr. deGrange also opined that the 7/10/24 accident was responsible for the disc herniation at L4-5. He opined that given the location of the L4-5 herniation, these foraminal discs do not respond to epidural injections and tend to be the most painful due to their compression of the dorsal root ganglion. He recommended a laminectomy and discectomy at L4-5 and referred Petitioner to a surgeon for a left shoulder surgery. Dr. deGrange prescribed Medrol dose pack and instructed Petitioner to continue Percocet. Petitioner was placed off work until his next appointment.

Petitioner followed-up with Dr. deGrange on 1/14/25 with unchanged diagnoses, restrictions, and treatment recommendations. (PX7) Petitioner reported that his prior diet that allowed him to lose 70 pounds was not working which resulted in blood work and being placed on a thyroid replacement. Dr. deGrange agreed that Petitioner should forego epidural steroid injections due to treatment of hyperthyroidism. He ordered Petitioner to return in two weeks.

On 1/28/25, Petitioner returned to Dr. deGrange and reported that the problem with his work comp status and payments had been resolved that morning as a result of Dr. deGrange's addendum report that was submitted yesterday. Petitioner was now scheduled to be evaluated by Dr. Solman for his shoulder on 2/5/25. Dr. deGrange stated he would address Petitioner's lumbar spine at his next follow up visit with likely physical therapy and perhaps injections. He continued Petitioner off work.

On 2/5/25, Petitioner was examined by Dr. Corey Solman for left shoulder pain. (PX8) Dr. Solman noted that on 7/10/24 Petitioner sustained a low back injury when he lifted concrete forms while straddling a footing of a building. He turned to put the form on a skid steer and had an onset of very severe low back pain and had to do a lighter job that day. Dr. Solman noted that on 7/12/24 Petitioner was descending a ladder that was not flush with the building. He placed his foot on a truss and slipped off. As Petitioner was falling, he used the cubital fossa of his left elbow with his elbow bent to catch himself. He had a significant retraction injury to the left shoulder which caused severe pain. Dr. Solman noted that Petitioner's accidents were witnessed but not reported until after the MRI returned with abnormal results.

Dr. Solman reviewed the MRI and performed a physical examination. He noted that Petitioner was 5'10" tall and weighed 295 pounds. Petitioner had tenderness over the AC joint and bicipital groove, pain with cross-arm abduction, positive impingement signs, and decreased and painful range of motion. Dr. Solman diagnosed left shoulder subacromial impingement, AC joint arthrosis, Type II SLAP lesion, possible biceps subluxation, and a rotator cuff tear. He opined that Petitioner's 7/12/24 accident was a substantial contributing factor in the development of his left shoulder pain. He opined that Petitioner's mechanism of injury was consistent with imparting a traction force onto the arm which certainly can create a rotator cuff tear, labral tear,

biceps tendon pathology, subacromial impingement, and inflame the acromioclavicular joint. He recommended an arthroscopic subacromial decompression, distal clavicle resection, biceps tenodesis, labral debridement with possible labral repair, and a rotator cuff repair. Petitioner was placed off work and advised that a follow-up appointment would be scheduled after surgical approval was received.

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.*

Petitioner testified that he worked on the roof trusses on Friday, 7/12/24. He stated that around 9:00 to 9:30 a.m. he was climbing down the truss to take a break and he slipped. He fell approximately one foot and caught himself with his left arm. He felt his body jerk with his weight when he caught himself. He wrapped his left leg around the truss and was able to climb down the ladder. Petitioner stated he felt like he tore something in his left shoulder and his back pain worsened.

Petitioner testified that he spoke to his co-worker Damon Stevens after his accident. Damon Stevens failed to appear at trial pursuant to subpoena. Petitioner testified that he got back on the roof after the break and continued to work. He stated that he was working with his supervisor Mr. Tomazzoli later that day on the trusses and Mr. Tomazzoli asked him to grab a truss lock. Petitioner told him that he did not feel comfortable getting the lock because he slipped and fell that morning and the lock was in an awkward place. Mr. Tomazzoli testified that Petitioner never reported an accident to him and never mentioned he had any injury.

Mr. Tomazzoli was Petitioner's direct supervisor and worked alongside Petitioner every day on the Mattoon project. He testified that his crew, including Petitioner, began working on roof trusses on 7/8/24 and began decking, or attaching plywood to the roof, on 7/9/24. He stated that Petitioner got dizzy working on the trusses on 7/8/24 and another employee told him to get down. He testified that Petitioner performed decking on 7/9/24 for 2 to 3 hours and had to get down because he was uncomfortable being on the roof. Mr. Tomazzoli testified that Petitioner worked with the ground crew thereafter and handed supplies up to the employees on the roof. He agreed that Petitioner worked on 7/12/24.

Kain Howell testified that he worked on the same crew as Petitioner, and they started setting trusses on 7/8/24. He testified that Petitioner got light-headed on 7/8/24 and had to get off the roof. Kain testified that they started decking the roof on 7/9/24 and Petitioner had difficulty carrying the 4x8 foot sheets of plywood. He believed that Petitioner worked with the ground crew after 7/9/24. Neither Mr. Tomazzoli nor Mr. Howell offered any written documentation or persuasive evidence to support their specific recollection seven months later that Petitioner had difficulty working on the roof on 7/8/24 and 7/9/24, and did not work on the roof beginning 7/10/24.

Petitioner testified that after working on 7/12/24 he returned home to Murphysboro, Illinois for the weekend and he went to the emergency room on 7/14/24. The emergency room records at SIH Memorial Hospital of Carbondale indicate Petitioner presented with radicular back pain and left shoulder pain. The triage nurse noted, "The top of my foot is hurting, my side is hurting, and shoulder is hurting. I almost fell out of the rafters at work and caught myself". It was noted that Petitioner worked construction and as he was climbing down from rafters he slipped and almost fell before he caught himself with his left arm. He felt an immediate pull in his left upper extremity and thought he twisted toward the right and had some right hip discomfort. He thought he pulled a muscle and continued to work and took his pain medication. The Arbitrator notes that the record does not contain a date of injury.

On 7/15/24, Petitioner followed up with his primary care physician Dr. Hanson. She noted that Petitioner fell from roof trusses and caught himself on Wednesday 7/10/24. Petitioner testified that he did not know why the date of accident was noted as 7/10/24, and not 7/12/24. Dr. Hanson noted, "Patient states was working on a roof and fell through the trusses. While in the process of falling, grabbed one with his left arm and briefly caught himself. Had a jarring of right lower extremity. Now having severe pain in right lower back radiating into leg and pain in left shoulder with weakness." Dr. Hanson diagnosed intervertebral disc disorder with myelopathy and acute left shoulder pain.

The Arbitrator finds that Petitioner's testimony is supported by the history contained in his medical records immediately following the accident. Based on the evidence as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on 7/12/24.

Issue (E): Was timely notice of the accident given to Respondent?

The Act states that notice shall be given to the employer as soon as practicable, but not later than 45 days after the accident. 820 ILCS 305/6(c) (emphasis ours). The purpose of the notice requirement of the Act is to enable an employer to investigate an alleged accident, and to protect an employer from unjust or fraudulent claims. *Gano Electrical Contracting v. Indus. Comm'n*, 631 N.E.2d 724, 727 (Ill. App. 4th Dist., 2004); *Thrall Car Manufacturing Co. v. Indus. Comm'n*, 356 N.E.2d 516 (1976). A claim is only barred if no notice whatsoever has been given. *Gano supra*. 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 he has been unduly prejudiced by the late notice. *Gano supra*; *Thrall supra*.

Petitioner testified that his accident occurred around 9:00 to 9:30 a.m. He testified that he spoke to his co-worker Damon Stevens after the accident; however, Mr. Stevens failed to appear at trial pursuant to subpoena. Petitioner testified that he continued to work on the roof and later that day his supervisor Mr. Tomazzoli asked him to grab a truss lock. Petitioner told him that he did not feel comfortable getting the lock because he slipped and fell that morning and the lock was in an awkward place. Mr. Tomazzoli testified that Petitioner never reported the accident to him and never mentioned he had any injury.

There was no evidence that Petitioner missed any work in the approximate two months following the accident. Respondent's owner, Clifton Howell, testified that the accident was not reported to him. There were no witnesses to Petitioner's accident and no written accident reports were admitted into evidence.

Petitioner sent a text to Anthony Howell from the emergency room on 7/14/24, attaching a photo of himself sitting on a hospital bed and a photo of lumbar spine CT scan results. Petitioner's message did not contain text or mention any work accident or injury to his shoulder. The Arbitrator notes that Petitioner and Dr. deGrange opined that his lumbar spine condition was causally connected to an alleged work accident of 7/10/24 that was the subject of Case No. 24-WC-025249.

Petitioner testified that he wanted to know what was wrong with him before he filed a workers' compensation claim, which is supported by his medical records. On 8/22/24 and 8/23/24, several telephone messages were exchanged between SIH and Dr. Hanson regarding whether Petitioner's treatment was going to be billed to workers comp and if so, authorization for the visit to neurosurgery was required. It was noted, "At patient's visit with me, he denied work comp claim. Do you know if he changed his mind". A voice message was left with Petitioner asking if work comp was being used. If so, approval from work comp was needed prior to scheduling with neurosurgery. Petitioner returned the call on 8/23/24 and advised that it was not a work comp case. It is unclear from the record whether these conversations related to Petitioner's lumbar spine or left shoulder, or both.

On 9/6/24, Petitioner returned to Dr. Hanson's office to discuss the results of his lumbar spine and left shoulder MRIs. She noted that Petitioner had not decided if "this was going to be work comp or not". Dr. Hanson noted again that Petitioner was currently trying to decide if the

injury and further visits were going to be filed as work comp or continued under his primary insurance. She advised him to decide before seeing specialists.

That same day, on 9/6/24, Petitioner sent a text message to Anthony Howell stating, “Hey bud I’m having trouble with my back this morning bad so I seen Dr this morning trying to figure out a solution and the S1 and L4 are slipped so bad it’s making my feet numb and very sore...I’ve been pushing myself to work hoping things would get better but it’s not happening. So I need to fix this problem before something worse happens. I was gonna get work comp but didn’t know what I needed to do...I was not wanting to go this route but I have to take care of me.” Petitioner sent a second text to Anthony that day stating, “I texted yr dad after I talked to you to call me when he had time but don’t know if he got text or not.” Anthony replied, “He has been in appointments all day.” The Arbitrator notes that Petitioner’s text did not describe how or when he sustained a work accident or injury, and there was no mention of a shoulder injury.

On 10/22/24, Petitioner’s physical therapist noted that “the incident” was known but was only reported to work comp when the results of the MRI came out. On 2/5/25, Dr. Solman noted that Petitioner’s accidents were witnessed but not reported until after the MRI returned with abnormal results. The Arbitrator does not find sufficient evidence that Petitioner’s accident of 7/12/24 was “known” or “witnessed”.

The element of prejudice to the employer is only pertinent when some notice is given. The Arbitrator finds that Petitioner failed to give Respondent any notice of his accident of 7/12/24 within the statutory period, as provided under 820 ILCS 305/6(c).

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

Based on the Arbitrator’s finding that Petitioner failed to provide Respondent with notice of the accident within the statutory period, as provided under 820 ILCS 305/6(c), this issue is moot.

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

Issue (K): Is Petitioner entitled to any prospective medical care?

Based on the Arbitrator’s finding that Petitioner failed to provide Respondent with notice of the accident within the statutory period, as provided under 820 ILCS 305/6(c), the Arbitrator denies all medical benefits and prospective medical care herein.

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

Based on the Arbitrator’s finding that Petitioner failed to provide Respondent with notice of the accident within the statutory period, as provided under 820 ILCS 305/6(c), the Arbitrator denies all temporary total disability benefits herein.

A handwritten signature in cursive script, reading "Linda J. Cantrell". The signature is written in dark ink and is positioned to the left of the date.

APRIL 4 2025

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025249
Case Name	Rodney Mezo v. C. Howell Construction Inc
Consolidated Cases	24WC025224
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0457
Number of Pages of Decision	21
Decision Issued By	Christopher Harris, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	John Winterscheidt, Scott Goldstein
Respondent Attorney	Stephen Klyczek

DATE FILED: 11/14/2025

/s/ Christopher Harris, Commissioner

Signature

DISSENT

/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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RODNEY MEZO,

Petitioner,

vs.

NO: 24 WC 25249

C. HOWELL CONSTRUCTION,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 4, 2025 is hereby affirmed and adopted.

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

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

The bond requirement in Section 19(f)(2) of the Act is only applicable when the Commission has entered an award for the payment of money. Therefore, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in the Circuit Court.

November 14, 2025/s/ Christopher A. Harris

Christopher A. Harris

CAH/tdm

O: 11/6/25

052

/s/ Maria E. Portela

Maria E. Portela

DISSENT

Upon consideration of the record and the credible testimony of the Petitioner, I find that the Petitioner sustained an accident arising out of and in the course of his employment, that timely notice of the accident was provided, and that his condition is causally related to the accident. I do not find the testimony of the supervisors to be persuasive or sufficient to rebut the Petitioner's testimony. Accordingly, I respectfully dissent from the Majority's decision and would find the claim compensable.

/s/ Marc Parker

Marc Parker

November 14, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC025249
Case Name	Rodney Mezo v. C. Howell Construction Inc
Consolidated Cases	24WC025224
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	John Winterscheidt, Scott Goldstein
Respondent Attorney	Stephen Klyczek

DATE FILED: 4/4/2025

/s/ Linda Cantrell, Arbitrator

Signature**INTEREST RATE WEEK OF APRIL 1 2025 4.07%**

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)

RODNEY MEZO

Employee/Petitioner

v.

C. HOWELL CONSTRUCTION, INC.

Employer/Respondent

Case # **24-WC-025249**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Springfield**, on **2/28/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **7/10/24**, 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 **\$78,986.44**; the average weekly wage was **\$1,518.97**.

On the date of accident, Petitioner was **46** years of age, *married* with **1** dependent child.

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 **\$0** under Section 8(j) of the Act.

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 on 7/10/24, the Arbitrator denies all benefits herein.

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

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



APRIL 4 2025

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
 COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

RODNEY MEZO,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 24-WC-025249
	)	
C. HOWELL CONSTRUCTION, INC.,	)	Consolidated Case No.: 24-WC-025224
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Springfield on February 28, 2025, pursuant to Section 19(b) of the Act. On 2/21/25, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to his lower back and body as a whole as a result of lifting a concrete form on 7/10/24. (Case No. 24-WC-025249, AX3). On 2/21/25, Petitioner filed an Amended Application for Adjustment of Claim alleging injuries to his left shoulder, low back, and body as a whole as a result of slipping while climbing down a rafter on 7/12/24. (Case No. 24-WC-025224, AX4). The cases were consolidated for purposes of trial.

The issues in dispute in Case No. 24-WC-025249 are accident, notice, causal connection, medical expenses, temporary total disability benefits, and prospective medical treatment. The Arbitrator has simultaneously issued a separate Decision in Case No. 24-WC-025224.

TESTIMONY

Petitioner called Respondent's owner and general contractor, Clifton Howell, to testify. His company has been in business for 40 years. Clifton testified that he is on the job almost every day mostly in a supervisory capacity. His office is in a construction trailer located on the job site where he spends 40-50% of his time. Clifton testified that Petitioner was employed by Respondent in July 2024 on a project in Mattoon, Illinois where they were constructing two buildings for the mentally impaired. Respondent assigned 13 to 15 employees on the Mattoon job that were divided into crews with a supervisor on each crew. Clifton testified that he did not specifically work alongside Petitioner.

Clifton testified that when an employee is injured the accident is reported directly to him and he refers it to the insurance company. He does not investigate the accident or have any further involvement. Clifton testified that he first learned that Petitioner was injured in "maybe the second week of September or something". He stated he learned at that time that Petitioner

was off work for one week to have dental work done and he was questioning why people were off work. He stated there was some conversation among the employees about a possible injury, but he had not heard anything prior to that time. Clifton stated he checked with his son, Anthony Howell, who oversaw two other foremen. Anthony told him that Petitioner needed off because he was sick and had a dental appointment. Clifton stated that when he learned of Petitioner's accident, he turned it over to the insurance company. He stated he would not have any way of knowing whether Petitioner did or did not injure his back or shoulder in July 2024. He stated, "He was on the job. I mean it's a possibility anybody could injure something".

Clifton testified that the job was completed in October and Petitioner likely worked through late September. He did not recall the circumstances of Petitioner leaving the job. Clifton recalled a phone conversation with Petitioner wherein he told Petitioner to check with him and not other people or the workman's comp people. He vividly recalled the conversation because he told Petitioner that if he did have a back injury or preexisting, he would not be able to work him. Clifton testified that the text exchange he had with Petitioner identified as PX10 was accurate. He agreed that Petitioner did not walk off the job. Clifton stated he did not document when he had the conversation with Petitioner, but he believed it was late September. After identifying the text message on Petitioner's phone at trial, Clifton agreed that the text message occurred on 10/9/24 when the job was nearing completion. Clifton testified that when he discussed Petitioner's injury with him he understood that Petitioner was referring to his back, and he later heard something mentioned about his shoulder. He did not personally witness Petitioner injure his back or shoulder on the job site.

Clifton believed that Petitioner missed work 2 or 3 times for "maybe a cold or sick or something like that. The only time I remember was the week or week and-a-half when he had the teeth worked on that he had pulled or whatever". He believed that Petitioner took off work for dental work in September, but he was not sure.

Petitioner called Clifton Howell's son, Anthony Howell, to testify. Anthony is part owner of Respondent's business and is the lead foreman. Anthony worked on the Mattoon project in July 2024. He stated that Petitioner worked with Mr. Tomazzoli who was Petitioner's immediate supervisor. Anthony testified that concrete was poured periodically during the duration of the project. He stated that the concrete forms come in all sizes, lengths, and shapes, from 6x2 feet to 2x8 feet. He estimated that the 2x8 forms weighed 80 to 100 pounds each which are removed by hand and stacked on skids. Anthony testified that a truss is the structure that forms and carries a roof load.

Anthony identified the text exchange he had with Petitioner (RX1) and stated Petitioner sent him the picture of himself on a hospital bed and a photo of a diagnostic test around 7/14/24. Petitioner also texted him on 9/6/24 stating he was having trouble with his back. Anthony testified that Petitioner called him in July and told him he had teeth pulled, and that he went to the doctor for his back. Anthony stated he did not discuss with Petitioner at that time how he injured his back. He testified that prior to the text exchange on 7/14/24 Petitioner never mentioned having problems with his back. Anthony testified that the week Petitioner took off to have teeth pulled was the same time Petitioner texted him with the photo and pictures regarding his back. He stated that Petitioner returned to work the following Monday and performed his job

duties. Anthony never noticed Petitioner having difficulty performing his job duties through 9/6/24. He stated that Petitioner never returned to work after 9/6/24 and he never spoke to Petitioner after that date.

Anthony testified that Petitioner's text message dated 9/6/24 was the first time he ever mentioned a work accident. Anthony called Petitioner who stated he had back problems and needed to take care of himself and mentioned workman's comp. Anthony told Petitioner to speak to his father Clifton about it. Anthony testified that Petitioner never mentioned how he injured his back during the phone conversation. He testified that Petitioner never reported an injury to his shoulder or any issues with his shoulder prior to 9/6/24. Anthony never witnessed Petitioner injure his back or shoulder while working. Anthony testified that Petitioner did not work with the concrete forms because that concrete work had been completed towards the end of May before Petitioner was hired. He was not sure what date Petitioner was hired to work the Mattoon job. Anthony testified that Petitioner did handle smaller and lighter sidewalk forms. He denied telling Petitioner to return to work after he was "healed up", but agreed he told Petitioner to talk to his father about worker's comp.

Petitioner testified that he began working at the Mattoon job site in May 2024 as a construction laborer. His job duties included every aspect of building a structure. Petitioner testified that he previously underwent back surgery by Dr. Kitchens in 2006 that did not result in work restrictions. He had not received treatment for his back since being released in 2006 until his work accident in July 2024. Petitioner denied any injuries or treatment to his left shoulder prior to July 2024. Petitioner testified that on 7/10/24 he was lifting a 2x8 concrete form after a fuel containment wall was poured and as he went to turn to throw the form on a skid steer he felt his back pop. He felt sharp pain in his back that prevented him from moving for a second. He estimated that the form weighed 75 pounds. He was working with his supervisor and foreman Paul Tomazzoli who told him not to lift anymore. Petitioner testified that he performed lighter work the rest of the day.

Petitioner testified that he worked on the roof trusses on Friday, 7/12/24. He stated that around 9:00 to 9:30 a.m. he was climbing down the truss to take a break and he slipped. He fell approximately one foot and caught himself with his left arm. He felt his body jerk with his weight when he caught himself. He wrapped his left leg around the truss and was able to climb down the ladder. Petitioner stated he felt like he tore something in his left shoulder and his back pain worsened.

Petitioner testified that he spoke to his co-worker Damon Stevens after his 7/12/24 accident. Petitioner noted at trial that Damon Stevens failed to appear pursuant to subpoena. Petitioner got back on the roof after the break and continued to work. He stated that he was working with his supervisor Mr. Tomazzoli later that day on the trusses and Mr. Tomazzoli asked him to grab a truss lock. Petitioner told him that he did not feel comfortable getting the lock because he slipped and fell that morning and the lock was in an awkward place. Petitioner testified that after working on 7/12/24 he returned home to Murphysboro, Illinois for the weekend and he went to the emergency room on 7/14/24. He stated he reported both work accidents in the emergency room and underwent a CT scan of his lumbar spine. Petitioner texted

a photo of himself and the CT scan results to Anthony Howell while he was at the hospital. Petitioner testified that the emergency room medical records juxtaposed his accident dates.

Petitioner testified that he treated with his primary care physician Dr. Emily Hanson's assistant on 7/15/24 and he reported his work accidents and symptoms. MRIs of his back and shoulder were ordered and he was referred to a surgeon for his lumbar spine. He stated that he did not know why Dr. Hanson's office note only referenced his accident involving the truss and incorrectly stated it occurred on 7/10/24. Petitioner testified that he returned to work for Respondent and his symptoms worsened. He had difficulty in the mornings, but he was fine once he got going, and he did not want to sit or take breaks because his back would get stiff. He stated that toward the end of the job his shoulder flared up.

Petitioner underwent the MRIs on 8/21/24 and returned to Dr. Hanson on 9/6/24 who again referred him to a surgeon. He stated that he wanted to know what was wrong with his back before he filed a worker's compensation claim. He last worked for Respondent on 9/6/24. Petitioner testified that Respondent sent him to SIH Work Care on 9/11/24 who placed him on work restrictions. He did not know why his accident dates are juxtaposed in SIH Work Care's records. Petitioner stated that Respondent did not authorize any treatment for his shoulder.

Petitioner treated with PA Bryant on 10/15/24 who ordered physical therapy. He testified that he did not know why the therapist noted on 11/1/24 that he had been on his feet all day the day before and he did not sleep well due to pain. Petitioner stated he has not worked anywhere since he last worked for Respondent on 9/6/24. Petitioner was not able to treat with his prior surgeon Dr. Kitchens without worker's comp approval. He went to Dr. deGrange on 12/10/24 who recommended back surgery and referred him to a shoulder surgeon. Petitioner was placed off work.

Petitioner testified that he saw Dr. Solman on 2/5/25 for his shoulder who recommended surgery and placed him off work. Petitioner last saw Dr. deGrange for his back on 2/18/25 and he still recommends surgery. He is scheduled to see Dr. Solman again once surgery is approved. He testified that his back is very stiff, and he has constant pain with movement. He has occasional tingling down his right leg. Petitioner has severe pain when he lifts his left shoulder overhead. He stated that his left shoulder is so weak he cannot pull his covers up to his neck at night. He has pain if he accidentally rolls onto his shoulder. His injuries have affected his daily activities, and he desires to undergo both surgeries.

On cross-examination, Petitioner testified that he is right hand dominant. Petitioner agreed that he had a prescription for Oxycodone filled on 6/21/24 by Dr. Hanson. He believed his medication was switched to Oxycodone for his back in 2014. He agreed he was taking Hydrocodone and Oxycodone for back pain. Petitioner testified that his back pain was worse after the work accidents.

Petitioner called Paul Tomazzoli to testify who is employed by Respondent as a foreman. Mr. Tomazzoli has worked for Respondent for 35 years and he was Petitioner's supervisor on the Mattoon project. Mr. Tomazzoli testified that he worked with Petitioner on the trusses and pouring concrete. He testified that Petitioner worked on the roof trusses on 7/8/24 and not on

7/12/24. He testified that there is daily drone footage of the project showing the trusses were set on 7/8/24 and his crew, including Petitioner, started decking on 7/9/24. Mr. Tomazzoli agreed that Petitioner worked on 7/10/24 and 7/12/24.

On cross-examination, Mr. Tomazzoli testified that he worked with Petitioner every day. He testified that Damon Stevens was a laborer that worked on the roof with Petitioner. Mr. Tomazzoli testified that he did not recall Petitioner injuring his back lifting a concrete form onto a skid steer. He could not recall what phase of the project they were in when Petitioner was hired to say if he was moving a concrete form or not. He believed they were finished with the forms when Petitioner was hired in May 2024.

Mr. Tomazzoli testified that around July when Petitioner was getting his teeth pulled, he mentioned getting an MRI for his back. He stated that Petitioner told him it was not job related and it was a previous injury he wanted to get check out. Mr. Tomazzoli testified that Petitioner never told him he was injured on the job, and he never witnessed Petitioner sustain an injury. He testified that Petitioner played bags or corn hole with them every Wednesday night and he never complained about his shoulder or back.

Mr. Tomazzoli testified that when Petitioner was working on the trusses on 7/8/24 he got dizzy, and another employee told him to get down. He testified that Petitioner performed decking on 7/9/24 for 2 to 3 hours and had to get down because he was uncomfortable being on the roof. Petitioner worked from the ground thereafter and handed supplies up to the other employees. Mr. Tomazzoli stated he never saw Petitioner slip when he worked on the roof.

Mr. Tomazzoli testified that the building foundations had been poured by the first week to mid-June 2024. He stated that there was concrete work being performed the week of 7/8/24, but his crew, including Petitioner, was working on framing.

Kain Howell testified on behalf of Respondent. Kain is Clifton Howell's nephew and is employed by Respondent as a carpenter. He worked on the Mattoon project between May and September 2024 and was on the same crew as Petitioner. Kain testified that they started setting trusses on the first building on 7/8/24 which was the only day Petitioner worked on the trusses with him. Kain stated that halfway through the day on 7/8/24 Petitioner became light-headed and had to get off the roof. Petitioner worked from the ground the rest of the day. Kain testified that they started decking on 7/9/24 and Petitioner had difficulty carrying the 4x8 foot sheets of plywood on the roof. Petitioner stopped doing decking that day and worked with the ground crew again. Kain did not believe that Petitioner ever returned to roof work again. He never observed Petitioner slip while on the roof, sustain any work injury, and Petitioner never told him he sustained a work injury.

Kain testified that Petitioner was questioned about an MRI for his back and Petitioner stated it was for a prior back injury. He stated the conversation occurred in the breakroom with him, Mr. Tomazzoli, and Petitioner. Kain stated he had never heard of Petitioner sustaining a shoulder injury.

Jesse Howell testified on behalf of Respondent. Jesse is a carpenter and was employed by Respondent between May and September 2024. He worked with Petitioner toward the end of the project in late August to early September when they were on the same crew putting up siding. Jesse testified that Petitioner never complained of back or shoulder pain that prevented him from putting up siding. He stated that prior to working with Petitioner he saw him on breaks and interacted with him at a campground where they were staying during the project. Jesse testified that Petitioner told him once that his back was hurting and that it was acting up from a previous injury. He believed the conversation took place in August or September. Jesse testified that Petitioner never told him he injured his back or shoulder while working for Respondent, and he never observed Petitioner sustain an injury.

On cross-examination, Jesse testified that Clifton Howell is his uncle. He stated that the siding they were putting up was cement or Hardie board. He estimated that a full-length siding board weighed 15 to 20 pounds.

DOCUMENTARY EVIDENCE

On 7/14/24, Petitioner presented to the emergency room at SIH Memorial Hospital of Carbondale with complaints of pain in his back with radiculopathy, left shoulder, top of foot, and side. (PX1) It was noted that Petitioner worked construction and as he was climbing down from rafters he slipped and almost fell before he caught himself with his left arm. He felt an immediate pull in his left upper extremity. It was also noted that Petitioner twisted towards the right and had some right hip discomfort. He continued working and he felt like he probably pulled a muscle and was taking his pain medication. Two days later he was walking and took a larger than normal step and twisted, causing immediate low back pain extending into his right lower extremity. Petitioner's prior back injury was noted. Petitioner was noted to be 5'10" tall and weighed 271 pounds. Physical examination revealed right lumbar tenderness, full range of motion in all extremities, slight increased pain with straight leg raises, and antalgic gait with decreased weight-bearing on the right. A CT scan of the lumbar spine revealed multilevel degenerative disc disease, moderate-to-severe at L5-S1; multilevel facet arthropathy, severe at L4-5; and moderate bilateral foraminal stenosis at L5-S1. Petitioner was diagnosed with an acute exacerbation of chronic low back pain and an unspecified left shoulder sprain. He was prescribed Cleocin, Toradol, Norflex, and Prednisone, and a neurosurgical referral was provided. Petitioner was instructed to follow up with his primary care physician and use a walker for ambulation. He was also prescribed antibiotics for dental pain and a broken tooth. It was noted that he had a dental appointment scheduled later that week.

On 7/14/24, Petitioner sent a text message to Anthony Howell with a photo of himself sitting on a hospital bed and a photo of the CT scan results.

On 7/15/24, Petitioner followed up with his primary care physician Dr. Hanson. (PX2) She noted that Petitioner fell from roof trusses and caught himself on Wednesday, 7/10/24. He underwent a CT scan in the ER yesterday and he would like to request an MRI. Dr. Hanson noted that Petitioner went to work on Friday [7/12/24] despite having some pain and by the time he drove 2.5 hours it had increased a lot. He went to the ER on Sunday [7/14/24] because the pain was unbearable. Dr. Hanson's record also stated, "Patient states was working on a roof and

fell through the trusses. While in the process of falling, grabbed one with his left arm and briefly caught himself. Had a jarring of right lower extremity. Now having severe pain in right lower back radiating into leg and pain in left shoulder with weakness.” He had pain with standing from a seated position that took his breath away, and tooth pain from a broken tooth. The records also reflected a prior Oxycodone prescription. Dr. Hanson diagnosed intervertebral disc disorder with myelopathy and acute left shoulder pain. She noted no prior history of left shoulder problems. Dr. Hanson ordered an MRI of the lumbar spine and an x-ray of the left shoulder. She referred Petitioner to neurosurgery and prescribed Oxycodone. He was released with no restrictions.

On 7/19/24, Petitioner underwent an x-ray of his left shoulder that was negative.

On 7/22/24, a telephone encounter with Dr. Hanson noted Petitioner’s prescription for Oxycodone was last refilled on 6/21/24. He is prescribed 120 pills to last 30 days. He was prescribed an increased dose of Oxycodone in the emergency room last week, supplying Petitioner will sufficient medication to last until 8/4/24. (PX2, p. 13)

On 7/23/24, a telephone encounter with Dr. Hanson noted Petitioner stated that his normal Oxycodone prescription of 120 pills was to be refilled today. Dr. Hanson noted the 15-day supply prescribed to Petitioner by the emergency room. Petitioner needed to know if he was still going to be able to get his normal refill. (PX2, p. 14) Dr. Hanson advised that it was too early for a refill. (PX2, p. 15)

On 8/21/24, Petitioner underwent an MRI of his left shoulder that revealed marked rotator cuff tendinosis, fraying and partial-thickness tearing of the supraspinatus, infraspinatus, and subscapularis, mild to moderate degenerative changes in the glenohumeral joint with small joint effusion, suspected degenerative changes of the superior posterior glenoid labrum, longhead tendinosis and possible subluxation of the tendon, and marked degenerative changes of the ACV joint with low grade sprain versus synovitis. The lumbar spine MRI revealed multilevel degenerative spondylosis, worse at L5-S1. (PX3)

On 8/22/24 and 8/23/24, several telephone messages were exchanged between SIH and Dr. Hanson regarding whether Petitioner’s treatment was going to be billed to workers comp and if so, authorization for the visit to neurosurgery was required. It was noted, “At patient’s visit with me, he denied work comp claim. Do you know if he changed his mind”. A voice message was left with Petitioner asking if work comp was being used. If so, approval from work comp was needed prior to scheduling with neurosurgery. Petitioner returned the call on 8/23/24 and advised that it was not a work comp case. His appointment with neurosurgery was scheduled on 10/25/24. (PX5, 4-9)

On 9/6/24, Petitioner returned to Dr. Hanson’s office to discuss the MRI results and his workman comp claim. (PX2, p. 22) Petitioner reported he had not decided if “this was going to be work comp or not”. Petitioner reported a lot of pain in his back with numbness into his feet and shoulder pain. Dr. Hanson referred Petitioner to neurosurgery. She noted that Petitioner was currently trying to decide if the injury and further visits were going to be filed as work comp or continued under his primary insurance. She advised him to decide before seeing specialists.

On 9/6/24, Petitioner sent a text message to Anthony Howell stating, “Hey bud I’m having trouble with my back this morning bad so I seen Dr this morning trying to figure out a solution and the S1 and L4 are slipped so bad it’s making my feet numb and very sore...I’ve been pushing myself to work hoping things would get better but it’s not happening. So I need to fix this problem before something worse happens. I was gonna get work comp but didn’t know what I needed to do...I was not wanting to go this route but I have to take care of me.” Petitioner sent a second text to Anthony that day stating, “I texted yr dad after I talked to you to call me when he had time but don’t know if he got text or not.” Anthony Howell replied, “He has been in appointments all day.”

On 9/11/24, Petitioner was seen at SIH Work Care. (PX4) He provided a history of setting trusses at work on 7/10/24, slipped and fell about a foot while climbing down, and caught himself, resulting in shoulder pain since. His pain increased with lifting his shoulder and he had severe, intermittent pain that prevented him from sleeping. Petitioner also reported that on 7/12/24 he was placing concrete forms, stood up and twisted, and felt a pop and immediate pain. Petitioner complained of severe, constant low back pain with numbness and tingling in his right leg, and his left foot felt heavy. He had pain with ambulating. Petitioner was diagnosed with ankylosis of the left shoulder and spondylosis of the lumbar spine; however, it was noted that diagnosis was not yet clear and further testing may be necessary. Petitioner was advised to take ibuprofen and Oxycodone and continue working on range of motion. He was placed on restrictions of no climbing, bending, carrying, or repetitive lifting, no lifting or overhead work, and no repetitive lifting. Petitioner was referred to neurosurgery and orthopedics. (PX4)

It was stipulated that on 10/9/24 Petitioner sent a text message to Clifton Howell that stated, “I never quit working for you I was told to get better by Anthony and to come back to work when I got healed up, then when I asked him about work comp he said to talk to you cause he didn’t know anything about that...so I talked to you and you said that’s what you had work comp for so get it...that you didn’t want to see me paralyzed...then you said I’m probably not gonna be able to hire you back because of liability reasons...and if you don’t mind I need my last paycheck stub because I never got one and a termination date...thanks.” Petitioner also texted, “Apparently work comp lawyer said that you had told them I quit on September 6th and are giving them a hard time getting the ball rolling...I don’t understand how any of this works but I do know I’m struggling and dealing with this is aggravating...I can’t call at the moment.” Mr. Howell replied, “Well just call when you can if you like. I told them nothing about quitting I think that came from lawyer but don’t know that. And way hope thing work out.”

On 10/15/24, Petitioner was examined by physician’s assistant Michael Bryant for a neurosurgical evaluation. (PX5, p. 12) PA Bryant noted Petitioner had an exacerbation of low back pain in July of this year with occasional pain and paresthesia in the anterior thigh to his foot. His pain was worse in the morning and returned with activity. He has left shoulder pain when raising his arm overhead. PA Bryant reviewed the lumbar MRI and noted degenerative changes most notably at L5-S1, an L5-S1 right hemilaminotomy defect and a central disc osteophyte complex versus scar tissue, and mild left foraminal stenosis at L5-S1, with no significant central canal stenosis. Physical examination revealed no focal motor weakness, reflex changes, or neural tension with a negative straight leg raise. PA Bryant recommended physical therapy and pain management with injections. (PX5, p. 12-17)

Petitioner underwent 10 physical therapy sessions at SIH Outpatient Rehab from 10/22/24 through 11/27/24. (PX6) At his initial visit on 10/22/24, the therapist noted Petitioner had low back pain after lifting concrete that was approximately 100 pounds each several times. He also noted Petitioner fell from trusses that caused a tear in his shoulder a few days after. Petitioner reported that he continued working and his pain progressed. The therapist noted that the incident was known but was only reported to work comp when the results of the MRI came out. Petitioner bought an elliptical and tried it yesterday for movement since he has not worked since 9/6/24. Petitioner had radiculopathy in his right foot and pain with weightbearing. Petitioner reported a 50% tear in his left rotator cuff and he was waiting for an appointment with orthopedics. Upon discharge on 11/27/24, the therapist noted that Petitioner was still waiting to see an orthopedist for his shoulder. (PX6, p. 50) He was still waiting on approval for the TENS unit she recommended. Petitioner had only short-term relief from therapy. He stated it felt like a pinched nerve that radiated down his right leg when bending forward. He could not get comfortable at night due to his left shoulder injury. Therapy was put on hold due to limited improvements.

On 12/2/24, Petitioner called PA Bryant's office and advised that therapy did not help his pain. (PX5, p. 18) Dr. Hanson informed Petitioner that PA Bryant wanted him to try injections and a referral had been made. It was noted Petitioner had been transferred to pain management "but they are not ready to schedule this referral at this time. Will reach out to patient when ready".

On 12/10/24, Petitioner was examined by Dr. Donald deGrange for work accidents on 7/10/24 and 7/12/24. (PX7) Petitioner reported that he was working construction and lifted concrete forms while straddling a footing of a new building being erected. As Petitioner turned to put the form down on a skid steer, he felt the onset of very severe low back pain that caught his breath. He stated that the foreman was present and witnessed the incident. Petitioner attempted to work but after several minutes it was apparent he was in significant pain and the foreman told him to discontinue the assignment. His supervisor then directed him to work on decking that was taking place on the roof. Petitioner reported that two days later, on 7/12/24, as he was attempting to go down the ladder at the top of the building that was a good foot below the surface, his foot slipped. He caught himself on a truss with the crook of his left elbow and had an onset of severe shoulder pain. Petitioner completed his work shift that day, but due to severe symptoms he went to the emergency room on 7/14/24. Dr. deGrange noted that Petitioner followed up with his primary care physician after the MRIs were performed, and he reported them to the owner's son, Anthony, who was his foreman. Anthony told him he did not know the steps to take for work comp and referred him to his father who told him to "get yourself fixed". Petitioner reported that he was recommended for physical therapy and injections but the soonest they could schedule him for injections was January. Dr. deGrange noted that 17 years prior Dr. Kitchens trimmed a lumbar disc that completely alleviated Petitioner's right lower extremity symptoms. Petitioner was able to return to work as a welder and recently went into the construction business for more consistent work.

Petitioner continued to have significant low back pain with right lower extremity radiculopathy and severe left shoulder symptoms. He had burning and searing pain in his

shoulder with lifting his arm with significant restrictions in movement. He denied any issues with his left shoulder prior to July 2024. His back pain was moderate to severe with activity, with persistent numbness and tingling in his right leg. Dr. deGrange reviewed the MRIs and diagnosed an L4-5 herniated disc and a left shoulder rotator cuff tear with near full-thickness tear at the supraspinatus and significant tearing of the infraspinatus and subscapularis. He opined that Petitioner's mechanisms of injury were consistent with the pathology shown on the MRIs of the lumbar spine and left shoulder. He opined that the 7/12/24 accident was the direct cause of the left shoulder rotator cuff tears. He found Petitioner's symptoms and examination were consistent with the tears and impingement syndrome. Dr. deGrange also opined that the 7/10/24 accident was responsible for the disc herniation at L4-5. He opined that given the location of the L4-5 herniation, these foraminal discs do not respond to epidural injections and tend to be the most painful due to their compression of the dorsal root ganglion. He recommended a laminectomy and discectomy at L4-5 and referred Petitioner to a surgeon for a left shoulder surgery. Dr. deGrange prescribed Medrol dose pack and instructed Petitioner to continue Percocet. Petitioner was placed off work until his next appointment.

Petitioner followed-up with Dr. deGrange on 1/14/25 with unchanged diagnoses, restrictions, and treatment recommendations. (PX7) Petitioner reported that his prior diet that allowed him to lose 70 pounds was not working which resulted in blood work and being placed on a thyroid replacement. Dr. deGrange agreed that Petitioner should forego epidural steroid injections due to treatment of hyperthyroidism. He ordered Petitioner to return in two weeks.

On 1/28/25, Petitioner returned to Dr. deGrange and reported that the problem with his work comp status and payments had been resolved that morning as a result of Dr. deGrange's addendum report that was submitted yesterday. Petitioner was now scheduled to be evaluated by Dr. Solman for his shoulder on 2/5/25. Dr. deGrange stated he would address Petitioner's lumbar spine at his next follow up visit with likely physical therapy and perhaps injections. He continued Petitioner off work.

On 2/5/25, Petitioner was examined by Dr. Corey Solman for left shoulder pain. (PX8) Dr. Solman noted that on 7/10/24 Petitioner sustained a low back injury when he lifted concrete forms while straddling a footing of a building. He turned to put the form on a skid steer and had an onset of very severe low back pain and had to do a lighter job that day. Dr. Solman noted that on 7/12/24 Petitioner was descending a ladder that was not flush with the building. He placed his foot on a truss and slipped off. As Petitioner was falling, he used the cubital fossa of his left elbow with his elbow bent to catch himself. He had a significant retraction injury to the left shoulder which caused severe pain. Dr. Solman noted that Petitioner's accidents were witnessed but not reported until after the MRI returned with abnormal results.

Dr. Solman reviewed the MRI and performed a physical examination. He noted that Petitioner was 5'10" tall and weighed 295 pounds. Petitioner had tenderness over the AC joint and bicipital groove, pain with cross-arm abduction, positive impingement signs, and decreased and painful range of motion. Dr. Solman diagnosed left shoulder subacromial impingement, AC joint arthrosis, Type II SLAP lesion, possible biceps subluxation, and a rotator cuff tear. He opined that Petitioner's 7/12/24 accident was a substantial contributing factor in the development of his left shoulder pain. He opined that Petitioner's mechanism of injury was consistent with

imparting a traction force onto the arm which certainly can create a rotator cuff tear, labral tear, biceps tendon pathology, subacromial impingement, and inflame the acromioclavicular joint. He recommended an arthroscopic subacromial decompression, distal clavicle resection, biceps tenodesis, labral debridement with possible labral repair, and a rotator cuff repair. Petitioner was placed off work and advised that a follow-up appointment would be scheduled after surgical approval was received.

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.*

Petitioner testified that on 7/10/24 he was lifting 2x8 concrete forms and as he turned to throw a form on a skid steer he felt his back pop. He felt sharp pain in his back that prevented him from moving for a second. He testified that he was working with his supervisor Paul Tomazzoli who told him not to lift anymore. Petitioner stated he performed lighter work the rest of the day.

Mr. Tomazzoli testified that he was Petitioner’s direct supervisor and he worked alongside Petitioner every day on the Mattoon project. Mr. Tomazzoli agreed that he poured concrete with Petitioner which involved using concrete forms, but that his crew began working on roof trusses on 7/8/24. Mr. Tomazzoli testified that the building foundations had been poured by the first week to mid-June 2024. He testified that his crew, including Petitioner, completed the trusses in one day and they began decking, or attaching plywood to the roof, on 7/9/24. He stated that Petitioner got dizzy working on the trusses on 7/8/24 and another employee told him to get down. He testified that Petitioner performed decking on 7/9/24 for 2 to 3 hours and had to get

down because he was uncomfortable being on the roof. Mr. Tomazzoli testified that Petitioner worked with the ground crew thereafter and handed supplies up to the employees on the roof. Mr. Tomazzoli testified that he never witnessed Petitioner injure his back at work. He stated that around July 2024 Petitioner mentioned he was getting an MRI of his back due to a previous injury, and Petitioner never told him it was job related.

Kain Howell testified that he worked on the same crew as Petitioner, and they started setting trusses on 7/8/24. He testified that Petitioner got light-headed on 7/8/24 and had to get off the roof. Kain testified that they started decking the roof on 7/9/24 and Petitioner had difficulty carrying the 4x8 foot sheets of plywood. He stated that Petitioner worked from the ground after 7/9/24 and never worked on the roof again. Kain testified that he never observed Petitioner sustain a work injury. He testified that Petitioner told him and Mr. Tomazzoli he was getting an MRI for his back due to a prior back injury.

On 7/14/24, Petitioner presented to the emergency room at SIH Memorial Hospital of Carbondale with complaints of radicular back pain and left shoulder pain. The triage nurse noted, "The top of my foot is hurting, my side is hurting, and shoulder is hurting. I almost fell out of the rafters at work and caught myself". It was noted that Petitioner worked construction and as he was climbing down from rafters he slipped and almost fell before he caught himself with his left arm. He felt an immediate pull in his left upper extremity and thought he twisted toward the right and had some right hip discomfort. He thought he pulled a muscle and continued to work and took his pain medication. The Arbitrator notes that the record does not contain a date of injury or onset of symptoms.

Petitioner reported to emergency personnel that two days later he was walking and took a larger than normal step and twisted, causing immediate low back pain extending into his right hip region and into his lower extremity. It was noted that Petitioner continued to have musculoskeletal pain but the pain in his low back radiating down his right leg caused him to come to the emergency room. Again, the record does state what date Petitioner was walking, twisted, and had a sudden onset of radicular low back pain.

Petitioner alleged that he sustained a low back injury working for Respondent on 7/10/24 while lifting a concrete form, which would result in the walking and twisting incident to have occurred two days later on Friday 7/12/24, the same day he alleges to have sustained the left shoulder injury that he reported in the emergency room on 7/14/24. The record did not contain a history of an accident involving lifting a concrete form. Petitioner also related his right hip pain to the roofing accident as he twisted toward the right, and his radicular right leg pain to walking two days later.

Petitioner sent a text to Anthony Howell on 7/14/24 that contained a photo of himself sitting on a hospital bed and a photo of the lumbar spine CT scan results. The Arbitrator notes that Petitioner's text did not contain a message regarding his back, but only the two photos. Anthony testified that Petitioner called him in July and told him he had teeth pulled, and that he went to the doctor for his back. Anthony did not discuss with Petitioner at that time how he injured his back. The emergency room record noted Petitioner had a dental appointment scheduled later that week for dental pain and a broken tooth, and antibiotics were prescribed.

On 7/15/24, Petitioner followed up with his primary care physician Dr. Hanson. She noted that Petitioner fell from roof trusses and caught himself on Wednesday 7/10/24. He underwent a CT scan in the ER yesterday and he would like to request an MRI. Dr. Hanson noted that Petitioner went to work on Friday [7/12/24] despite having some pain and by the time he drove 2.5 hours it had increased a lot. He went to the ER on Sunday [7/14/24] because the pain was unbearable. There was no mention of a work accident involving lifting concrete forms. Similar to the emergency room record, Petitioner related his right lower extremity symptoms to the roofing accident, as Dr. Hanson noted, "Patient states was working on a roof and fell through the trusses. While in the process of falling, grabbed one with his left arm and briefly caught himself. Had a jarring of right lower extremity. Now having severe pain in right lower back radiating into leg and pain in left shoulder with weakness." He had pain with standing from a seated position that took his breath away, and tooth pain from a broken tooth.

Petitioner testified that he wanted to know what was wrong with his back before he filed a workers' compensation claim. On 10/22/24, Petitioner's physical therapist noted that "the incident" was known but was only reported to work comp when the results of the MRI came out. On 2/5/25, Dr. Solman noted that Petitioner's accidents were witnessed but not reported until after the MRI returned with abnormal results. The Arbitrator does not find any evidence, other than Petitioner's testimony, that his alleged accident of 7/10/24 while lifting a concrete form was witnessed. Petitioner stated he was working with his foreman Mr. Tomazzoli when he had a severe onset of low back pain after turning to throw a concrete form onto a skid steer. Mr. Tomazzoli denied having any knowledge of the accident. No accident reports were admitted into evidence and there was no mention of the alleged 7/10/24 accident in Petitioner's medical records until 9/11/24.

Petitioner underwent the lumbar spine and left shoulder MRIs on 8/21/24. On 8/22/24 and 8/23/24, several telephone messages were exchanged between SIH and Dr. Hanson regarding whether Petitioner's treatment was going to be billed to workers comp and if so, authorization for the visit to neurosurgery was required. It was noted, "At patient's visit with me, he denied work comp claim. Do you know if he changed his mind". A voice message was left with Petitioner asking if work comp was being used. If so, approval from work comp was needed prior to scheduling with neurosurgery. Petitioner returned the call on 8/23/24 and advised that it was not a work comp case. His appointment with neurosurgery was scheduled on 10/25/24.

On 9/6/24, Petitioner returned to Dr. Hanson's office to discuss the MRI results. She noted that Petitioner had not decided if "this was going to be work comp or not". Dr. Hanson noted again that Petitioner was currently trying to decide if the injury and further visits were going to be filed as work comp or continued under his primary insurance. She advised him to decide before seeing specialists.

That same day, on 9/6/24, Petitioner sent a text message to Anthony Howell stating, "Hey bud I'm having trouble with my back this morning bad so I seen Dr this morning trying to figure out a solution and the S1 and L4 are slipped so bad it's making my feet numb and very sore...I've been pushing myself to work hoping things would get better but it's not happening. So I need to fix this problem before something worse happens. I was gonna get work comp but

didn't know what I needed to do...I was not wanting to go this route but I have to take care of me." Petitioner sent a second text to Anthony that day stating, "I texted yr dad after I talked to you to call me when he had time but don't know if he got text or not." Anthony replied, "He has been in appointments all day." The Arbitrator notes that Petitioner's text does not describe how or when he allegedly injured his back while working for Respondent. Petitioner's medical records relate his low back and right lower extremity symptoms to the roofing incident, and the alleged accident involving a concrete form was not noted until 9/11/24, five days after he texted Anthony on 9/6/24 stating he wanted work comp. Anthony testified that this was Petitioner's last date of employment with Respondent. He testified that he did not notice Petitioner having any difficulty performing his job duties through 9/6/24.

On 9/11/24, Petitioner was seen at SIH Work Care and again it was noted that the roofing incident occurred on 7/10/24. Petitioner provided a history of setting trusses at work on 7/10/24, slipped and fell about a foot while climbing down, and caught himself, resulting in shoulder pain since. Petitioner also reported that on 7/12/24 he was placing concrete forms, stood up and twisted, and felt a pop and immediate pain. Petitioner complained of severe, constant low back pain with numbness and tingling in his right leg, and his left foot felt heavy. The Arbitrator notes that this visit was the first time an accident was mentioned involving lifting a concrete form.

It was undisputed that on 10/9/24 Petitioner sent a text message to Clifton Howell that stated, "I never quit working for you I was told to get better by Anthony and to come back to work when I got healed up, then when I asked him about work comp he said to talk to you cause he didn't know anything about that...so I talked to you and you said that's what you had work comp for so get it...that you didn't want to see me paralyzed...then you said I'm probably not gonna be able to hire you back because of liability reasons...and if you don't mind I need my last paycheck stub because I never got one and a termination date...thanks." Later that day Petitioner sent a second text to Clifton stating, "Apparently work comp lawyer said that you had told them I quit on September 6th and are giving them a hard time getting the ball rolling...I don't understand how any of this works but I do know I'm struggling and dealing with this is aggravating...I can't call at the moment." Mr. Howell replied, "Well just call when you can if you like. I told them nothing about quitting I think that came from lawyer but don't know that. And way hope thing work out."

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 7/10/24.

Issue (E): Was timely notice of the accident given to respondent?

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 on 7/10/24, this issue is moot.

Issue (F): Is Petitioner's current condition of ill-being causally related to 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 on 7/10/24, this issue is moot.

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

Issue (K): Is Petitioner entitled to any prospective medical care?

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 on 7/10/24, the Arbitrator denies all medical benefits and prospective medical care herein.

Issue (L): 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 on 7/10/24, the Arbitrator denies all temporary total disability benefits herein.



APRIL 4 2025

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC006964
Case Name	Robert Carter v. AAA Cooper Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0458
Number of Pages of Decision	12
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	David Martay, David Petrich
Respondent Attorney	Marcy Bennett

DATE FILED: 11/14/2025

/s/Maria Portela, Commissioner

Signature

23WC006964

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT CARTER,

Petitioner,

vs.

NO: 23WC006964

AAA COOPER TRANSPORTATION,

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 and nature and extent and being advised of the facts and law, affirms and adopts, with the following modification, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

At arbitration, the parties stipulated that Petitioner was entitled to and Respondent paid \$172.88 in temporary total disability (TTD) benefits for 1/7 weeks (5/4/23) and \$4,336.79 in temporary partial disability (TPD) benefits for 13-1/7 weeks (3/7/23 - 6/6/23). The parties also stipulated that Respondent was entitled to credit of \$4,509.67 for those payments. However, while the Arbitrator gave Respondent credit for those amounts it paid to Petitioner, the Arbitrator failed to award Petitioner the TTD and TPD to which the parties stipulated. Accordingly, we modify the Arbitration Decision to Order that Respondent pay Petitioner \$172.88 for the stipulated 1/7 weeks of temporary total disability and \$4,336.79 for the stipulated 13-1/7 weeks of temporary partial disability.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 23, 2024 is hereby affirmed and adopted with the modification noted above.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$172.88 for the stipulated 1/7 weeks 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 \$4,336.79 for the stipulated 13-1/7 weeks of temporary partial disability under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to credit of \$4,509.67 for amounts previously paid as stipulated by the parties.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$657.60 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 loss of use of 5% of the person as a whole.

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 \$16,600.00. 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.

November 14, 2025

/s/ Maria E. Portela

SE/

/s/ Marc Parker

O: 10/16/25

49

/s/ Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC006964
Case Name	Robert Carter v. AAA Cooper Transportation
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	James Byrnes, Arbitrator

Petitioner Attorney	David Martay, David Petrich
Respondent Attorney	Marcy Bennett

DATE FILED: 12/23/2024

/s/ James Byrnes, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 17, 2024 4.16%

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**

Robert Carter

Employee/Petitioner

v.

AAA Cooper Transportation

Employer/Respondent

Case # **23** WC **006964**

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 **November 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 **March 2, 2023**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *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 **\$56,992.00**; the average weekly wage was **\$1,096.00**.

On the date of accident, Petitioner was **45** years of age, *married* with **6** 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 **\$172.88** for TTD, **\$4,336.79** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$4,509.67**.

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

ORDER

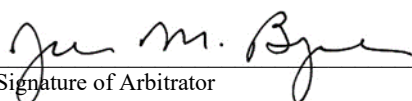
Based on the factors outlined in Section 8.1b(b), as set forth in the Memorandum of Decision of Arbitrator, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of **5%** disability to the person as a whole pursuant to **§8(d)2** of the Act.

Respondent shall therefore pay Petitioner permanent partial disability benefits of **\$657.60/week** for **25** 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.

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

December 23, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS’ COMPENSATION COMMISSION

ROBERT A. CARTER,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 23WC006964
AAA COOPER TRANSPORTATION,	)	
	)	
	)	
Respondent.	)	

MEMORANDUM OF DECISION OF ARBITRATOR

PROCEDURAL HISTORY

This matter proceeded to hearing on November 8, 2024, in Chicago, Illinois before Arbitrator James Byrnes on Petitioner’s Request for Hearing. Issues in dispute include causal connection and nature and extent of the injury. Arbitrator’s Exhibit 1 (AX 1).

FINDINGS OF FACT

Job Duties

Petitioner, Robert Carter, testified that on March 2, 2023, he was employed with Respondent AAA Cooper Transportation as a driver. (T 6) Petitioner drove a 26 ft. box truck for pick-up and delivery and had been employed by AAA Cooper Transportation for “not quite a year” prior to the accident. (T 7)

Accident

On March 2, 2023, Petitioner suffered a work-related injury while trying to move a 2,000-pound pallet within his truck. While pulling the pallet, he experienced a "pop" in his lower back, followed by pain radiating down his right leg. (T 7-8) He promptly reported the injury and sought medical attention the same day. (*Id.*)

Prior Medical Condition

The medical records set forth a history of a prior work-related injury 2 to 3 years ago, for which Petitioner underwent physical therapy and an epidural steroid injection, but no issue with the low back until the injury on March 2, 2023. (PX 1, p. 82)

Summary of Medical Records

The Petitioner presented to Concentra Occupational Health Center on March 2, 2023, and provided a consistent history of the work accident, specifically a pop in his low back with pain in the right lumbar area, while attempting to move a pallet with a pallet jack at work that day. (PX 1, p. 15) He described the pain as a pulling sensation, with a pain level of 8/10, but he denied any radiculopathy or numbness and tingling to his lower extremities. (*Id.*)

The physical examination on that date revealed tenderness at L4-5 with limited range of motion of the lumbar spine. (PX 1, p. 16) Bilateral leg lifting reproduced right lumbar pain and he was unable to perform weight-bearing on his right leg. The neurologic and strength testing was negative, and x-rays were normal. (*Id.*) The Petitioner was diagnosed with a lumbar strain and provided a prescription for pain medication, as well as for physical therapy. (*Id.*, p. 17) He was placed on work restrictions, which were accommodated by Respondent. (T 8-9)

The Petitioner commenced physical therapy at Concentra on March 6, 2023. He complained of shooting pain in the right side of his low back, with pain shooting down his right leg to his knee. (PX 1, p. 78) The examination revealed limited lumbar range of motion and positive straight leg raising on the right. (*Id.*, p. 79) The Petitioner continued to participate in physical therapy for his low back at Concentra, two to three times per week. (T 10)

On March 28, 2023, the Petitioner underwent an MRI scan of his lumbar spine at Saint Mary Open MRI. The scan showed “a 3mm disc bulge more to the right side with a small right paracentral annular tear seen obliterating the anterior epidural fat, encroaching upon the right lateral recess and compromising the right intervertebral neural foramen. There is no disc pathology, central canal stenosis or neural foramen stenosis.” (PX 1, p. 21)

The Petitioner followed-up at Concentra on March 30, 2023, at which time he reported some improvement since his last visit, and that he was participating in physical therapy and working on a light duty basis. (PX 1, p. 29) Based on his clinical presentation and review of the MRI scan, Petitioner was diagnosed with herniation of intervertebral disc between L4 and L5. (*Id.*, p. 30) He was referred to a physiatrist for additional treatment and was advised to continue with physical therapy and to work with the same restrictions. (*Id.*, p. 31)

The Petitioner was seen for consultation with Dr. Murtaza, a physical medicine and rehabilitation specialist, on April 17, 2023. He reported some improvement with approximately 18 physical therapy sessions, but reported a current pain level of 7/10, with pain in the right lumbar region with intermittent radiation into the buttock and proximal right thigh. (PX 1, p. 82) The physical examination revealed tenderness to palpation in the right lumbosacral paraspinal muscles, increased with forward flexion, extension, and rotation maneuvers to the right greater than left. (*Id.*) Sensation was mildly decreased to the right thigh and buttock, with positive straight leg raise on the right and negative on the left. (*Id.*, p. 83)

Dr. Murtaza diagnosed the Petitioner with L4-5 herniated nucleus pulposus with right lower extremity radiculopathy. He recommended a right L4-5 transforaminal epidural steroid injection, as well as ongoing physical therapy and restricted work. (PX 1, p. 83)

The Petitioner was last seen for physical therapy on May 22, 2023. The Petitioner reported some back pain due to tightness but was able to perform activities of daily living independently. It was noted that he had reached 85% of his functional goals and was able to perform therapeutic exercises with minimal increase in pain, and it was recommended that he continue therapy to improve strength, AROM and decrease pain to meet functional goals. (PX 1, p. 31)

The Petitioner was last seen for treatment by Dr. Murtaza on May 22, 2023, noting 80% relief of his low back pain and right lower extremity radicular symptoms following the epidural steroid injection. The Petitioner denied any significant pain and was overall feeling much better and felt capable of returning to work. (PX 1, p. 27)

The physical examination by Dr. Murtaza revealed no significant lumbar tenderness and relatively full range of motion, with pain increased at the extremes of forward flexion and right lateral bending. He had negative straight leg raise testing bilaterally. Dr. Murtaza recommended he complete his course of physical therapy and return to regular duties as of May 29, 2023. The doctor also encouraged him to continue with his home exercise program. He was released from the doctor's care at that point. (PX 1, p. 27)

Petitioner's Current Condition

The Petitioner returned to work for Respondent on May 29, 2023, performing his regular work duties at the same rate of pay, and he continued to work for Respondent through the date of hearing. (T 13-14) He continues to experience pain in the low back on the right side, just above his buttocks, on a "spontaneous" basis, that "comes and goes," but does not occur daily. (T 14-15) Sometimes the pain will shoot down his right leg, but the majority of the time the pain is confined to his back. (T 15) Sitting for too long (more than an hour or so) and heavy lifting (up to 60 or 70 pounds) can bring on the pain, for which he takes over-the-counter pain medicine. (T 16) He also uses a massage belt as necessary for the pain. (T 17)

Other than a visit to his primary care physician, he has not sought treatment for his back since being discharged in May of 2023. (T 17, 20)

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).

In the case at hand, the Arbitrator observed Petitioner during the hearing and found him to be a credible witness. Petitioner responded directly to the questions put to him in a straight-forward manner, was not evasive and did not seek to exaggerate his condition. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and did not find any contradictions that would deem the witness unreliable.

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v. Industrial Commission*, 47 Ill.2d 144, (1970). A Petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, (1977).

Regarding Issue (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). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. *International Harvester v. Industrial Commission*, 93 Ill.2d 59, 63-64 (1982).

The medical records set forth a history of a prior work-related injury 2 to 3 years ago, for which Petitioner underwent physical therapy and an epidural steroid injection, but no issue with the low back until the injury on March 2, 2023. (PX 1, p. 82) The Petitioner was fully capable of performing his regular work activities as a driver for Respondent at the time of the March 2, 2023, work accident.

Following that accident, Petitioner testified to, and the records establish, the need for treatment to his lumbar spine, including physical therapy and an epidural steroid injection. Following a course of 23 physical therapy visits and the injection, the Petitioner was discharged from care by Dr. Murtaza on May 22, 2023. At both the office visit and the final physical therapy visit on that date, Petitioner reported improvement of about 80-85% in his pain level and functional ability, with some lingering pain and tightness. Dr. Murtaza encouraged him to complete his physical therapy program and continue with home exercises in the future, and allowed him to return to full duty work as of May 29, 2023.

The Petitioner did in fact return to his regular job at that time, but also testified as to an ongoing residual lumbar condition, including occasional pain in the low back with radiculopathy. He testified to the use of over-the-counter medication and a lumbar massage belt as necessary.

The Respondent agrees Petitioner's condition of ill-being through May 29, 2023, is causally related to the work accident, but disputes any causal relationship beyond that date. The Respondent offered no evidence, however, to rebut the Petitioner's assertion that his current

condition of ill-being (including his current residual symptoms) is causally related to the accident of March 2, 2023, or to show Petitioner's current condition is related to some other cause.

Based on the above, the Arbitrator finds the Petitioner's current condition of ill-being is causally related to the work accident of March 2, 2023.

Regarding 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. "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. Therefore, this factor is not applicable, and the Arbitrator gives it no weight.

Under Section 8.1b(b)(ii), the occupation of the injured employee, the Arbitrator notes that Petitioner was employed as a driver on the date of accident and prior thereto. The medical records and the Petitioner's testimony confirm that he was released to return to work full duty without restrictions. He returned to work as a driver for the Respondent after the accident and continues to work in that capacity as of the date of hearing. The Petitioner has experienced no change in occupation nor did his official work duties change because of the accident. The Arbitrator gives lesser 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 45 years old at the time of the accident. The Arbitrator gives some weight to this factor.

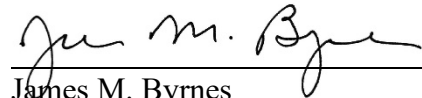
Under Section 8.1b(b)(iv), the employee's future earning capacity, the Arbitrator notes Petitioner returned to work for Respondent in the same job and at the same rate of pay as prior to the accident. No evidence was presented to show Petitioner's future earning capacity was negatively impacted by the work accident. The Arbitrator gives lesser weight to this factor.

Under Section 8.1b(b)(v), evidence of disability corroborated by the treating medical records, the lumbar MRI scan conducted on March 28, 2023, showed "a 3mm disc bulge more to the right side with a small right paracentral annular tear seen obliterating the anterior epidural fat, encroaching upon the right lateral recess and compromising the right intervertebral neural foramen." Dr. Murtaza diagnosed the Petitioner with L4-5 herniated nucleus pulposus with right lower extremity radiculopathy. He recommended a right L4-5 transforaminal epidural steroid

injection, as well as ongoing physical therapy and restricted work. Petitioner underwent the epidural steroid injection and attended 23 physical therapy sessions and was thereafter discharged without restrictions by Dr. Murtaza on May 22, 2023. He testified to occasional low back pain with radiculopathy, for which he uses over-the-counter medication and a lumbar massage belt. The Petitioner testified that other than being seen by his primary care physician, he has not sought treatment for his work-related injuries since that date, approximately 18 months ago. 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 5% disability to the person as a whole, pursuant to Section 8(d)2 of the Act, which corresponds to 25 weeks of permanent partial disability benefits at a weekly rate of \$657.60.

IT IS SO ORDERED:


James M. Byrnes
Arbitrator

December 23, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018039
Case Name	Andrew Fletcher v. Prairie Farms Dairy, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0459
Number of Pages of Decision	26
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Joshua Humbrecht
Respondent Attorney	Matthew Terry

DATE FILED: 11/17/2025

/s/Amylee Simonovich, 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))
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Andrew A. Fletcher,

Petitioner,

vs.

NO: 21 WC 018039

Prairie Farms Dairy, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, permanent partial disability and whether Petitioner's claim was barred by his prior settlement contract, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission agrees with the Arbitrator's analysis and assessment of permanent partial disability but modifies the last sentence of paragraph (3) under Issue (L) on page 16 to read, "The Arbitrator places significant weight on this factor".

Additionally, the Commission modifies the last sentence of the first full paragraph on page 15 of the Decision, pertaining to Issue (J), to read, "Respondent shall reimburse Petitioner \$1,502.90 for out-of-pocket expenses and pay to Petitioner the unpaid and outstanding medical pursuant to Section 8(a) and Section 8.2 of the Act." The first sentence of the Arbitration Decision Order is likewise modified to read, "Respondent shall reimburse Petitioner for out-of-pocket expenses detailed in PX7, shall pay the unpaid medical expenses to Petitioner pursuant to §8(a) and §8.2 of the Act, and shall hold Petitioner harmless for any payments made pursuant to §8(j) of the Act."

Finally, the Commission modifies a scrivener's error in the second paragraph of the Arbitration Decision, replacing the "\$615.61" temporary total disability rate listed with "\$615.31".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on December 4, 2024, is modified as stated herein, and otherwise affirmed and

adopted.

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall reimburse Petitioner for out-of-pocket expenses detailed in PX7, shall pay to Petitioner the unpaid medical bills pursuant to §8(a) and §8.2 of the Act, and shall hold Petitioner harmless for any payments made pursuant to §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall pay Petitioner temporary total disability benefits from March 31, 2021 through April 21, 2021 and November 2, 2022 through February 5, 2023, or 16 6/7ths weeks at a rate of \$615.31, totaling \$10,372.28. Respondent shall receive credit for \$5,488.22 in §8(j) benefits. After the credit, Respondent shall pay Petitioner \$4,884.15 in new money temporary total disability benefits and shall hold Petitioner harmless for any claim for reimbursement pursuant to §8(j) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall pay the sum of \$553.78 for 31.6 weeks as provide in §8(e) of the Act, because the injuries sustained caused 7.5% loss of use to the right arm and 5% loss of use to the left arm after credit from Petitioner's prior settlement.

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$29,600.00. 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.

November 17, 2025

o: 11/4/2025
AHS/kjj
051

/s/ Amylee H. Simonovich
Amylee H. Simonovich

/s/ Stephen J. Mathis
Stephen J. Mathis

/s/ Kathryn A. Doerries
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC018039
Case Name	Andrew Fletcher v. Prairie Farms Dairy, Inc.
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	23
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Joshua Humbrecht
Respondent Attorney	Matthew Terry

DATE FILED: 12/4/2024

/s/ Bradley Gillespie, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 3 2024 4.31%

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**

Andrew A. Fletcher
 Employee/Petitioner

Case # 21 WC 018039

v.

Consolidated cases: N/A

Prairie Farms Dairy, Inc.
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Bradley Gillespie, Arbitrator of the Commission, in the city of Mt. Vernon, on September 10, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other Respondent alleges Petitioner's claim is barred by a prior settlement contract 20WC10584

FINDINGS

On January 16, 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 \$47,993.92; the average weekly wage was \$922.96.

On the date of accident, Petitioner was 34 years of age, Married 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 \$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 \$5,488.22 under Section 8(j) of the Act for nonoccupational payments.

ORDER

Respondent shall reimburse Petitioner for out-of-pocket expenses on PX 7, shall pay the unpaid medical expenses to Petitioner, and shall hold Petitioner harmless for any payments made pursuant to 8(j) of the Act.

Respondent shall pay Petitioner TTD from 3/31/2021 – 4/21/2021 and 11/2/2022 – 2/5/2023, or 16 6/7ths weeks at a rate of \$615.61, totaling \$10,372.28. Respondent shall receive credit for \$5,488.22 in 8(j) benefits. After credit, Respondent shall pay Petitioner \$4,884.15 in new money TTD and shall hold Petitioner harmless for any claim for reimbursement pursuant to 8(j) of the Act.

Respondent shall pay the sum of \$553.78 for 31.6 weeks as provided in 8(e) of the Act, because the injuries sustained caused 7.5% loss to the right arm and 5% loss to the left arm after credit from his prior settlement.

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

DECEMBER 4 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ANDREW FLETCHER,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 21WC018039
	)	
PRAIRIE FARMS DAIRY, INC.,	)	
	)	
Employer/Respondent.	)	

DECISION OF ARBITRATOR

PROCEDURAL HISTORY

On June 22, 2021, Andrew Fletcher [hereinafter "Petitioner"] filed an Application for Adjustment of Claim alleging repetitive trauma injuries with a manifestation date of January 16, 2021, to his bilateral arms, elbows, hands and fingers and other body parts while working at Prairie Farms Dairy, Inc. [hereinafter "Respondent"]. (Arb. Ex. 2) This matter proceeded to trial on September 10, 2024, pursuant the Illinois Workers' Compensation Act [hereinafter "the Act"]. (Arb. Ex. 1) The issues in dispute are: 1) whether Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) whether Petitioner's state of ill-being of bilateral ulnar neuritis is causally related to his injury; 3) unpaid medical bills; 4) past TTD; 5) nature and extent of the injury; and 6) whether Petitioner's current claim was barred by his settlement contract from 20WC010584.

Prior Workers' Compensation Claim 20 WC 10584

On March 13, 2019, Petitioner filed an Application for Adjustment of Claim alleging repetitive trauma injuries to his bilateral arms, elbows, wrists and hands and other body parts which was assigned case number 20WC010584. (RX 1 pp. 4-5) Eventually, Petitioner was assessed by a local orthopedic physician, Dr. Anand, and then was sent by Respondent to a Section 12 examination with Dr. Krummenacher, at Motion Orthopedics. (Tr. pp. 18-19; PX 8) Dr. Krummenacher opined that his bilateral upper extremity conditions were causally related to his work duties. (PX 8 pp. 18-20) Thereafter, Petitioner elected to treat with Dr. Krummenacher and underwent right-sided carpal tunnel release on August 6, 2019; left carpal tunnel and left cubital releases on August 30, 2019; and right cubital tunnel release on September 27, 2019. (PX 8 pp. 21-26) Throughout his preoperative examinations, there was no indication of subluxation of his ulnar nerves. (*See generally* PX 8) His ulnar nerves were reassessed intraoperatively during his surgeries and no subluxation was noted. (PX 8 pp. 21-26) He was also assessed postoperatively on multiple occasions, all without any indication of subluxation. (PX 8 pp. 3-10)

After his 2019 surgeries, Petitioner was returned to light duty work on or about October 22, 2019, and at that time, he was training a co-worker on the pasteurizer. (Tr. pp. 20-21) On October 28, 2019, Dr. Krummenacher noted Petitioner had a couple episodes of numbness and tingling on his left ring and small fingers. (PX 8 p. 6). On November 12, 2019, Petitioner reported a few episodes of numbness and tingling to his left ring and small fingers when driving but was released to full duty work. (PX 8 p. 5) On December 16, 2019, Petitioner reported some soreness to his medial right elbow, but no numbness or tingling. (PX 8 p. 4) At his January 13, 2020, office visit, Petitioner had been working full duty for nearly two months. (PX 8 p. 3) Dr. Krummenacher's January 13, 2020 office note states, "he is having some medial elbow soreness at his last visit. These have resolved. He has no subjective complaints today." (PX 8 p. 3) His exam was completely normal at that visit.

Petitioner testified that following his surgeries by Dr. Krummenacher, he was released light duty and his restrictions were accommodated. (Tr. p. 20) He described training co-workers on the pasteurizer and was instructed to "point and tell them how to do it." (Tr. p. 21) Petitioner confirmed his light duty work on the December 12, 2019, office visit with Dr. Krummenacher, and he reported some right elbow pain and they removed a leftover suture. (Tr. pp. 21-22; PX 8 p. 4) Then on January 13, 2020, he was completely release by Dr. Krummenacher's care after completing some therapy. (Tr. p. 22) Petitioner testified that, as of January 13, 2020, he was not having any problems with numbness and tingling to his digits or problems with his elbows. (Tr. p. 23) He stated he was 100% improved. *Id.* Petitioner testified that he was not having any problems with numbness, tingling or elbow pain when he settled his 2019 claim in June of 2020. (Tr. p. 24) Nothing happened from the time of his release by Dr. Krummenacher and his contract being approved that led Petitioner to believe that Dr. Krummenacher's surgery was unsuccessful. (Tr. pp. 49-50)

He testified about his August 15, 2020, appointment with Dr. Atwood (which was actually August 17, 2020), where he reported a wrench struck his wrist. (Tr. pp. 24-25; PX 6 pp. 3-4) At that time, Petitioner had no complaints of numbness, tingling, or elbow complaints. (Tr. pp. 24-25; PX 6 pp. 3-4) He explained that between November 2019 and September 2020, he worked in pasteurizing, but had worked in strawberry milk and chocolate milk pasteurizing, which are two different shifts. (Tr. pp. 25-26) Around mid-September 2020, Petitioner returned to the same job that led to his 2019 case being filed. (Tr. p. 26) That department was unload/pull off. *Id.*

On June 5, 2020, Arbitrator Linda Cantrell approved a Lump Sum Settlement Contract for case number 20WC010584 which included 15% permanent partial disability [hereinafter "PPD"] of the right arm/elbow and 12.5% PPD of the left arm/elbow. (RX 1 pp.1-3). Petitioner voluntarily executed the settlement contract and acknowledged he gave up his "right to any further medical treatment, at the employer's expense, for the results of this injury" and his "right to any additional benefits if my condition worsens as a result of this injury." (RX 1p. 2)

Additional settlement terms provided that the settlement was “in full and final settlement of any and all claims under the [Illinois] Workers’ Compensation and Occupational Diseases Acts for all accidental injuries allegedly incurred herein, including all claims to date and including any and all results or developments, aggravations, fatal or non-fatal, allegedly resulting from such accidental injuries.” (RX 1 p. 2) Petitioner also waived all rights under Sections 8(a) and 19(h) of the Illinois Workers’ Compensation Act. (RX 1 p. 3)

After settling case number 20WC010584, Petitioner filed the Application for Adjustment in the instant matter alleging injuries to his “bilateral arms, elbows, hands & fingers and other body parts” from “repetitive lifting, pushing, pulling and grasping in the course of work” with a manifestation date January 16, 2021. (Arb. Ex. 2)

FINDINGS OF FACT

Petitioner testified that he is employed with Respondent at its Olney, Illinois location. (Tr. p. 17) He had been employed by Respondent for approximately 7 years as of the date of trial. *Id.* The Olney, Illinois facility serves as both a manufacturer of products and a distribution center for other products. *Id.* Over the course of his employment, Petitioner worked in several different departments. *Id.* On January 16, 2021, Petitioner filed a claim for numbness and tingling into his pinky and ring fingers. (Tr. p. 18) He acknowledged his previous workers’ compensation claim in 2019 for which he underwent bilateral carpal and cubital tunnel releases. *Id.*

Petitioner’s Present Claim

Petitioner described his duties leading up to reporting his current claim as “unload,” which involved receiving products from other plants. (Tr. pp. 26-27) He worked with a crew to complete the unloading process. (Tr. p. 29) Product is brought in on trailers, and is often loaded on pallets. (Tr. p. 27) In any given shift, Petitioner and his coworkers will unload 3-4 trucks, sometimes more, sometimes less. (Tr. pp. 28-29) Some of the product is received in cases and unloaded, and some of the product is unloaded off the pallet and placed in cases by workers. *Id.* The workers use pallet jacks to pull the pallets off a semi-trailer. (Tr. pp. 27-28) Trucks can contain between six and 22 pallets of product. (Tr. p. 29) Once the product is off the truck, the shrink wrap or banding is undone. *Id.* If the product is already in cases, it is pulled off the pallets and dragged to the chain. *Id.* If it is not already cased up, it needs to be cased up prior to going to the chain. *Id.* Examples of products that need to be placed in cases includes quarts of milk, pints of milk, coffee, and almond milk. (Tr. p. 30) The quarts of milk were in cellophaned packages of 6, and the pints were in packages of 12. *Id.* Quarts and pints are taken off the pallet, placed in a case until 1 case is filled. (Tr. p. 31) Then an empty case is placed on top of the first, and the process repeats until they have 6 cases stacked high. (T. 31) To get the packages of six quarts or twelve pints into cases, Petitioner lifts the product from a pallet and then places it in cases. *Id.* When the cases reach 6 high, a metal hook with a handle

is inserted to the bottom of the stack and the stack is manually dragged to the chain. (Tr. pp. 32-33) The stacks of cases can weigh up to 200 lbs. (Tr. p. 33) The product is dragged between four and fifteen feet. (Tr. p. 34) Petitioner testified that he would drag cases and lift product with both hands. *Id.* His elbows are bent while he lifts and drags the products. (Tr. pp. 34-35) Petitioner lifts full cases to stack them six high. *Id.*

The other portion of Petitioner's job is called pull off. (Tr. p. 35) Milk comes down the chain line and Petitioner uses a metal hook to pull cases stacked 6 high off the chain. (Tr. pp. 35-36) In 2020, he described doing pull off for one to three hours per shift. (Tr. p. 36) He worked unload for several hours, then go over to pull off and complete that work, returning to unload to finish his shift. *Id.* Performing his unload/pull off duties required Petitioner to bend his elbows hundreds of times, lifting and picking up product. (Tr. p. 50) This included lifting heavy weights around 200 lbs., but also smaller weights as he lifted lighter products wrapped in cellophane. (Tr. p. 51)

Before returning to unload/pull off in September 2020, Petitioner was assigned to pasteurizer. (Tr. p. 38) He testified that toward the end of his time on the cocoa pasteurizer, he noticed some numbness and tingling into his digits. (Tr. pp. 37-38) Petitioner estimated he began noticing symptom about a month before going to the cooler. (Tr. p. 38) His symptoms persisted with unload/pull off and he reported it to his employer on January 16, 2021. (Tr. pp. 38-39)

Petitioner presented to Dr. Brian Atwood on January 20, 2021. (PX 6) Petitioner reported a history of elbow pain, hands falling asleep, and stated it had been going on for the last 2-3 months. *Id.* He reported having numbness in his 4th and 5th fingers, noting it was worse while working. *Id.* He was diagnosed with ulnar neuritis on his right side. *Id.*

On February 24, 2021, Petitioner sought treatment from Dr. Patrick Stewart at the Southern Illinois Hand Center. (PX 2). Dr. Stewart noted tenderness over Petitioner's ulnar nerve at the elbow and positive compression testing. (PX 2 p. 2) With regard to his right elbow/arm exam, he charted, "*with elbow flexion the ulnar nerve subluxes to the apex of the medial epicondyle and is in a vulnerable position.*" *Id.* His exam was substantially similar on the left side with the exception that, Dr. Stewart noted, "*with elbow flexion the ulnar nerve becomes vulnerable and it does not sublux to the apex of the medial epicondyle.*" *Id.* After taking a history and conducting a physical exam, Dr. Stewart's differential diagnosis was "Status post bilateral cubital tunnel releases with ulnar nerve subluxation and possible recurrent cubital tunnel syndrome." (PX 2 p. 3) He noted that Petitioner does not have recurrent carpal tunnel, but his ulnar nerves were "obviously irritated" and "somewhat vulnerable with elbow flexion." *Id.* He provided Petitioner a steroid pack as well as elbow pads. They discussed elbow and forearm position and pressure, which can put increased pressure and irritation over the ulnar nerves. (PX 2, pp. 3-4)

Petitioner returned on March 17, 2021, reporting very little improvement. (PX 2 pp. 15-16) Petitioner's exam revealed persistent mobility of the ulnar nerve. (PX 2. P. 15) Dr. Stewart offered a differential diagnosis of "recurrent bilateral cubital tunnel syndrome versus ulnar neuritis." *Id.* He ordered EMG/NCS studies. Dr. Stewart noted Petitioner was back working in the cooler, which is where he was assigned when he had his previous problems in 2019. *Id.* Dr. Stewart noted his work activities back in 2019 included loading milk into cases weighing between 80 to 250 lbs. (PX 2 p. 16)

On March 31, 2021, Petitioner returned for discussion of his EMG/NCS. (PX 2 p. 21) His physical exam confirmed subluxation of his ulnar nerves right, worse than left. The results of his EMG/NCS confirmed he was not suffering from recurrent cubital tunnel syndrome. Dr. Stewart confirmed his diagnosis as symptomatic subluxation of the ulnar nerves. (PX 2 p. 21). He placed Petitioner on an anti-inflammatory. Dr. Stewart noted that Petitioner's symptoms are related to the instability of the ulnar nerves at his elbows, which were the result of his prior cubital tunnel releases and related to his previous surgery. (PX 2 p. 22) Dr. Stewart restricted Petitioner to no elbow flexion beyond 45 degrees to see how he tolerated his position. (PX 2 p. 23)

When Petitioner returned on April 21, 2021, he had subjective and objective improvement in his symptoms. (PX 2 p. 24-25) He reported decreased tenderness and only a few episodes of numbness and tingling. *Id.* Subluxation was present but the time away from work, use of elbow pads and anti-inflammatories, had improved his condition. *Id.* Dr. Stewart returned Petitioner to full-duty work to test whether his improvement could be maintained or if work was an aggravating factor for his symptoms. (PX 2 p. 24)

On May 26, 2021, Petitioner reported a significant increase in symptoms with return-to-work. (PX 2 p. 27) Dr. Stewart diagnosed Petitioner with symptomatic ulnar nerve subluxation of his bilateral elbows status post cubital tunnel releases. *Id.* Given the relatively benign EMG/NCS findings, Dr. Stewart recommended proceeding with bilateral elbow MRIs to assess edema or inflammation of Petitioner's ulnar nerves. *Id.*

On August 13, 2021, Petitioner underwent bilateral elbow MRIs. (PX 3) His left elbow MRI was interpreted as showing mild subcutaneous edema, slight flattening of the ulnar nerve, and intrasubstance increased T2 signal within the left ulnar nerve at the cubital tunnel, best demonstrated on series 4, suggesting mild neuronitis/inflammation. Petitioner's right elbow MRI was interpreted by the radiologist to show increased T2 signal within the ulnar nerve proximal to the cubital tunnel in the upper arm which may be related to mild neuronitis. (PX 3)

On August 27, 2021, Dr. Stewart noted his impressions regarding the bilateral elbow MRIs. (PX 2 p. 30) He felt both demonstrated findings consistent with neuritis of the ulnar nerves with the left appearing more substantial than the right. Petitioner's physical examination continued to show subluxation of the ulnar nerves. Given Petitioner's complaints

and the findings on MRI, Dr. Stewart recommended bilateral ulnar nerve submuscular transpositions. (PX 2 p. 30)

On November 30, 2021, Dr. Stewart authored a letter to Petitioner's counsel, explaining his opinion that Petitioner's work duties were a causative factor in the bilateral ulnar neuritis. (PX 2, pp. 41-42) He felt that Petitioner's interval improvement following his removal from work from March 31, 2021, through April 21, 2021, confirmed that his work activities were contributing to subluxation and neuritis. *Id.*

Respondent undertook a records review with Dr. Christopher Kostman, dated November 19, 2021. (RX 2 pp. 85-92) Dr. Kostman reviewed Petitioner's medical records of his 2019 treatment and the recent MRIs. After reviewing Petitioner's March 31, 2021, EMG/NCS, Dr. Kostman opined that Petitioner was not suffering from recurrent cubital tunnel. (RX 2 p. 92) He believed the timeframe from his 2019 surgeries through his post-operative period would have demonstrated any symptoms related to his initial diagnosis of bilateral carpal and cubital tunnel, including subluxation or irritation of his ulnar nerve as being directly related to his initial injury or surgery. *Id.* Dr. Kostman opined that he did not believe Petitioner's condition of ill-being to his bilateral elbows were causally related to the prior claim or his current claim. *Id.*

Respondent then requested Petitioner attend a Section 12 evaluation on January 26, 2022. Dr. Kostman authored a second report. (RX 2 pp. 93-99) Dr. Kostman did not detect subluxation or laxity of the ulnar nerves on exam. (RX 2 p. 4) He reported that Petitioner did have sensitivity and a positive Tinel over his cubital tunnel. *Id.* He had decreased sensation to light touch and sharp touch along his ulnar nerve distribution of his bilateral upper extremities. *Id.* Dr. Kostman opined that Petitioner's diagnosis was residual ulnar nerve symptoms subsequent to cubital tunnel release bilaterally. (RX 2 p. 98) He did not believe that Petitioner's work activities permanently aggravated his elbow conditions. (RX 2 pp. 98-99) Dr. Kostman stated Petitioner "does not have recurrent injury or direct compression" and stated that Petitioner has had some symptoms in his elbows from the time of his release forward, which started prior to October 2020. *Id.* Despite his opinions regarding causation of Petitioner's symptoms, Dr. Kostman believed that undergoing bilateral submuscular transpositions is a treatment option that may improve his symptoms. (RX 2 p. 99)

Petitioner recorded his IME visit with Dr. Kostman and the same was submitted into evidence. (PX 10) In total, Dr. Kostman spent nearly 1 hour asking Petitioner questions and examining him. (PX 10, recordings file 5 and 7) Petitioner stated he was 100% better to Dr. Kostman after his surgeries and physical therapy was completed on multiple occasions during the interview process. (PX 10, recording 5, min. 15:00 – 19:00; 28:20-29:30; recording 7, mins. 00:30 – 4:00) He also explained, on several occasions, that his symptoms started at the end of his time in pasteurizing and as he shifted over to unload/pull off toward the end of September 2020 through October 2020. (PX 10, recording file 5, min. 28:20–29:30; 30:30-31:15; recording file 7, min: 4:00-5:00)

Petitioner continued to follow-up with Dr. Stewart throughout late 2021 and 2022. (*See generally* PX 2). On 11/2/2022, Petitioner underwent exploration and rerelease of his left ulnar nerve with anterior submuscular transposition; z-plasty slide lengthening for anterior submuscular transposition; and application of his left long-arm splint. (PX 5, p. 1-3) On 12/16/2022, Petitioner underwent exploration and rerelease of his right ulnar nerve with anterior submuscular transposition; z-plasty lengthening for anterior submuscular transposition; and application of a right long-arm splint. (PX 5, p. 6-8)

Post-operatively, he underwent therapy. (PX 2, p. 97-119) His medical records reflect interval improvement from post-operative visit-to-visit. (Id) Petitioner reported immediate improvement in his bilateral numbness and tingling from his 12/30/2022 visit to his 1/17/2023 visit to his final 3/3/2023 visit. (PX 2, p. 97-98; 101-102; 109-110). On 3/31/2023, he reported no recurrence as far as numbness and tingling. (PX 2, p. 109) He did report some soreness one to two times a week. (PX 2, p. 114)

Dr. Stewart deposition was taken. (PX 1). Dr. Stewart is a board certified and fellowship trained hand and arm specialist. (PX 1 pp. 6-7; Dep. Ex. 1) Dr. Stewart reviewed some of the medical records from Petitioner's 2019 claim. (PX 1 pp. 8-9) At the first visit, Dr. Stewart was contemplating a differential diagnosis of bilateral recurrent cubital tunnel versus ulnar neuritis. (PX 1 pp. 12-13) He was skeptical about recurrent cubital tunnel because recurrence is between 5 – 10% within 10 years of a prior release. (PX 1 p. 13) He explained the purpose of elbow pads and positioning and, specifically, that when our arms are straight, there is no pressure to the ulnar nerve, however, as the arms go into flexion, the pressure increases on the nerve, as does the tension, which can cause the nerve to sublux and slide out of its protective position in the groove, and into a vulnerable position over the apex of the bone. (PX 1 pp. 15-16) He also explained the goal of the steroid and the anti-inflammatories. In essence, the nerve and the tunnel have a defined space. If the nerve is larger, more swollen, then it has a tendency to want to slide out of the groove, because it is bigger than the groove intended. (PX 1 p. 18) He explained how recurrent cubital tunnel was ruled out of the differential. (PX 1 pp. 19-21)

He testified that the bilateral MRIs were confirmatory for exactly what he was looking for when he ordered the studies and how they correlated to the subluxing ulnar nerves he detected on his initial examination on 2/24/2021. (PX 1, p. 36-39) He also explained that, based on the EMG/NCS results that were repeated in 3/2021 as well as Dr. Krummenacher's operative reports and medical records, that Petitioner underwent a "complete release" at the time of his 2019 cubital tunnel surgeries. (PX 1, p. 26-28)

He further explained the statement in his chart regarding Petitioner's symptoms being directly related to the instability of the ulnar nerves at his elbow which are the result of his cubital tunnel release prior cubital tunnel release. (PX 1, p. 28-29; & PX 2) He stated that by releasing the nerve, we [surgeons] create mobility and create some instability, however, often

times the nerves don't move at all. (PX 1 p. 29) Intraoperatively, while the incision is open, surgeons look right at the nerve and flex and extend to see whether the nerve stays in place. *Id.* He reviewed Dr. Krummenacher's operative reports which confirmed Petitioner was taken through motion intraoperatively without any evidence of subluxation. (PX 1 pp. 29-30) It was common long ago with every cubital tunnel release, to transpose the nerve, but the current recommendations and guidelines do not invoke transposing the nerve. (PX 1 p. 31) The vast majority of patients do not require transpositions at the time of cubital tunnel releases. *Id.* Dr. Stewart felt that, if Dr. Krummenacher identified subluxation intraoperatively, he should have transposed the nerve. (PX 1 p. 32)

He was asked in the hypothetical, that had Petitioner underwent his surgeries in 2019 and returned to a desk job, would he expect Petitioner would still have developed subluxation and neuritis, to which he explained it would be "unlikely" in that most desk workers do not lift hundreds of pounds throughout their day. (PX 1 pp. 32-33) Dr. Stewart was asked in the hypothetical had Petitioner retired after his surgeries with Dr. Krummenacher, if it would be possible that his ulnar nerve complaints could have arisen anyway? To which he replied, it would depend on his activity. (PX 1 p. 63) He opined to a reasonable degree of medical certainty that Petitioner's current neuritis is the result of the repetitive flexion under weight that he experiences on a daily basis at his job for Respondent. (PX 2 p. 33) He explained how the period from March 31, 2021, thru April 21, 2021, in which Petitioner experienced substantial improvement in his symptoms, supported his hypothesis that his work activities, including repetitive flexion under weight, were causing his condition of ill-being. (PX 2 pp. 34-35) He opined that bilateral ulnar nerve transpositions were reasonable, necessary, and causally related to Petitioner's work duties. (PX 1 pp. 41-42)

He testified that the number of people in that have had a cubital tunnel release, without ulnar transposition, who then present down the road with subluxing ulnar nerves requiring ulnar nerve transposition is approximately 1%. (PX 1 pp. 56-57) On cross-examination, Dr. Stewart explained that people can have subluxing ulnar nerves regardless of the fact that they have not undergone a cubital tunnel release previously. (PX 1 p. 57) He agreed that by doing a cubital tunnel release, you increase the risk of a nerve subluxing. (PX 1 p. 58)

Dr. Stewart was specifically asked on cross-examination, "[s]o his current condition of ill-being is basically a continuation of those 2019 surgeries based on the – having a cubital tunnel release and then developing symptoms later?"

He replied,

No, because he didn't have – the difficulty is relying on Dr. Krummenacher's evaluation that his ulnar nerves were not unstable prior to surgery and were not unstable after surgery. So, something then made him develop instability. Well, that would be an activity where you're putting more tension on the nerve where it wants to sublux and it wants to

move out, which is the elbow flexion repetitively grasping and lifting, that then creates the interval, which unfortunately, you know for you, is supported by the fact that it's the only thing that made him better was when I put him on work restrictions; and we only restricting him from his elbow flexion. And the workplace said, "No, can't work." And during that time his symptoms improved, despite all other conservative measures we tried. (PX 1 pp. 58-59)

Dr. Kostman's deposition was taken and submitted into evidence. (RX 2) Dr. Kostman is a board-certified orthopedic surgeon with 50% of his practice to the upper extremities and 50% to the lower. (RX 2 p. 7) Dr. Kostman confirmed he authored a records review report dated November 19, 2021, and then subsequently conducted an in-person Section 12 examination on January 26, 2022. (RX 2 pp. 9-10) He reviewed Petitioner's records from his care and treatment with Dr. Krummenacher from his 2019 claim, as well as the records related to Dr. Stewart's care and treatment. (RX 2 pp. 10-11) He opined that Petitioner's bilateral elbow MRIs from August 13, 2021, showed the ulnar nerve in its groove. (RX 2 p. 14) He noted that the radiologist reported soft tissue scarring and subcutaneous edema. *Id.* The radiologist also mentioned increased T2 signal proximal to the cubital tunnel that may be mild neuritis. (RX 2 pp. 14-15) He stated that there was notation on the left MRI of flattening and intrasubstance increased T2 signal within the left ulnar nerve of the cubital tunnel suggesting mild neuritis. (RX 2 p. 15) Dr. Kostman opined it could be from the initial decompression or inflammation. *Id.*

Dr. Kostman thought that Petitioner had sensitivity and a positive Tinel's overlying his cubital tunnel. (RX 2 p. 16) He did not detect a palpable subluxation of either nerve. (RX 2 pp. 16-17) He had decreased sensation to light and sharp touch along his ulnar nerve distribution. (RX 2 p. 18) Between the time of his records review and his examination his examination of Petitioner in January 2022, Dr. Kostman identified some additional records from Dr. Stewart starting in November 2021 that he reviewed along with some job descriptions. (RX 2 p. 19)

He opined that Petitioner's diagnosis in January 2022, was residual ulnar nerve symptoms subsequent to cubital tunnel release. (RX 2 pp. 21-22) He did not believe Petitioner had recurrent cubital tunnel syndrome. *Id.* It was his opinion that Petitioner's work duties from his return in October 2019 through filing of the instant claim did not permanently aggravate nor cause his diagnosis. (RX 2 p. 22) He did not believe Petitioner was suffering from ulnar neuritis secondary to subluxation. (RX 2 p. 22) He felt it was reasonable for Petitioner to proceed with the recommended surgery. (RX 2 p. 23) He stated it was "possible" that the surgery would help relieve or improve Petitioner's intermittent symptoms. *Id.* He did not believe the surgery would be related to his work duties. *Id.* He reviewed Dr. Stewart's testimony, and it did not change his opinions. (RX 2 p. 24) He felt patients with post-operative subluxation following an in situ decompression were experiencing subluxation secondary to release of tissues and hypermobility. (RX 2 pp. 24-25)

On cross, Dr. Kostman confirmed he is not fellowship trained in hand surgery. (RX 2 p. 26) As of the date of his deposition on April 1, 2022, Dr. Kostman had performed 1 or 2 cubital tunnel releases that year. *Id.* He believes he bills \$1,000 per hour for his medical-legal work. *Id.*

Regarding his records review of November 19, 2021, Dr. Kostman agreed that his report stated that Petitioner's symptoms were not related to his March 2019 claim, nor the claim filed in January 2021. (RX 2 pp. 30-31, 92) Dr. Kostman believed Petitioner would have manifested symptoms of subluxation in the immediate post-operative course of care. (RX 2 p. 31) From his review of Dr. Krummenacher's records, Petitioner was not suffering from any issues associated with neuritis at the end of care. *Id.* Petitioner told him his symptoms were better following surgical intervention and therapy. *Id.* Dr. Kostman would not confirm that Petitioner told him his symptoms were 100% better. *Id.*

Dr. Kostman explained his process for performing an Independent Medical Examination is to interview the examinee, leave the room, dictate and then return. (RX 2 pp. 31-32) He explained that sometimes he takes notes. (RX 2 p. 32) He denied having any notes for Petitioner's examination. *Id.* He confirmed Petitioner's wife was not permitted to enter the exam room with him. (RX 2 pp. 32-33)

Dr. Kostman confirmed that prior to Dr. Krummenacher's care and treatment in 2019, there was no indication Petitioner was suffering from laxity, mobility, or subluxation of his ulnar nerves. (RX 2 p. 33) According to Dr. Kostman's reading of Dr. Krummenacher's, intraoperative report, Dr. Krummenacher took Petitioner's elbows through range of motion following his in situ cubital tunnel release and there was no indication of subluxation. (RX 2 pp. 33-35) Dr. Kostman observed that Dr. Krummenacher made no exam findings postoperatively that revealed subluxation. (RX 2 p. 35)

During his January 2022 physical examination, Dr. Kostman reported that Petitioner had sensitivity over his ulnar nerves and a positive Tinel's overlying his cubital tunnels. (RX 2 p. 35) Patients suffering from ulnar neuritis will manifest that symptom. *Id.* He confirmed light and sharp sensation testing along the ulnar nerve distribution was decreased. (RX 2 p. 36) He agreed that Petitioner's subjective complaints were consistent with his findings on examination. *Id.* He also agreed that the history provided to him was that Petitioner's current symptoms started at or near October of 2020. (RX 2 pp. 36-37) The history provided to Dr. Atwood at January 20, 2021, of 2-3 months of symptoms was consistent with the history Petitioner relayed to Dr. Kostman. (RX 2 p. 37) He confirmed that the history provided to Dr. Stewart at his February 24, 2021, visit of 3-4 months of symptoms, was consistent as well. (RX 2 p. 38)

Dr. Kostman could not confirm whether Petitioner's arms were straight or bent at the time of the MRIs. (RX 2 p. 41) Petitioner did not have congenitally subluxing ulnar nerves.

(RX 2 pp. 41-42) Dr. Kostman admitted that, theoretically, you could see flattening of the ulnar nerve from it repetitively coming out of the groove. (RX 2 p. 42) He did not appreciate the flattening of the nerve described by the radiologist but did state there may have been some T2-weighted signal. (RX 2 p. 43) Dr. Kostman acknowledge the slight amount of fluid that could be consistent with neuritis. (RX 2 p. 67) He agreed that if the ulnar nerve is subluxing out of the bony groove, that could be the cause of Petitioner's symptoms. (RX 2 p. 48) When the nerve subluxes there is rubbing that takes place, and as it happens repetitively, that inflames irritation that is already present. (RX 2 p. 48) As the process continues the inflamed ulnar nerve can grow in girth. *Id.* As it grows in girth, it will make it less likely it will fit in the groove, although he expected to appreciate that on MRI. *Id.* Assuming Dr. Stewart and the radiologist were right about the inflammatory process taking place on the MRIs, he agreed that would be objective evidence of neuritis. (RX 2 p. 57)

He believed Petitioner was demonstrating ulnar nerve symptoms without a positive EMG. (RX 2 p. 47) He felt steroid treatment; anti-inflammatories; bracing; and elbow pads were all reasonable conservative care. *Id.* Dr. Kostman admitted that an inflamed ulnar nerve would make it more sensitive to direct compression. (RX 2 p. 49) He then confirmed that when he assessed Petitioner, part of the history was that Petitioner told him he had elbow soreness was different than what he presented with in the past. (RX 2 pp. 50-51)

As for the change in his opinion from his November 2021 records review and his January 2022 Independent Medical Evaluation, he stated he did not have "80%" of the data at the time of his November 2021 medical record review. (RX 2 pp. 50-51) Dr. Kostman had already testified that his expectation was that if Petitioner had ulnar nerve symptoms related to his prior cubital tunnel release, they would have manifested in the post-operative period. (RX 2 pp. 31, 51) The additional materials he referenced were two office visits and his exam in January 2022. (RX 2 pp. 51-53) He agreed that the August 17, 2020, visit with Dr. Atwood regarding Petitioner's hand trauma, did not reveal any problem of numbness, tingling or elbow problems, despite being seen specifically for a hand injury. (RX 2 p. 56)

Dr. Kostman was questioned extensively about statements in his 1/2022 IME report that Petitioner told him his symptoms started around 10/2020; that they started in 4/2020 and that Petitioner had residual symptoms from the time of Dr. Krummenacher's release in 1/2020. (RX 2, p. 57-60) He would not pinpoint, for the sake of his opinions, when Petitioner started to have numbness and tingling to his pinky and ring finger following Dr. Krummenacher's surgeries. (RX 2, p. 57-64)

Dr. Kostman denied that Petitioner told him that his symptoms were 100% better following his care with Dr. Krummenacher. (RX 2 pp. 60-61, lines 21-5; and p. 62, lines 19-21) Dr. Kostman agreed that if Petitioner had told him his symptoms were 100% better, he would have incorporated that into his report. (RX 2 pp. 62-63, 69) He denied any memory of Petitioner describing the manifestation of his symptoms in late September 2020 when he was coming off pasteurizing cocoa and moving to unload. (RX 2 pp. 61-62) He stated, "I don't

have information to support that.” (RX 2 p. 63) He also stated that Petitioner did not provide him a “date or month” when describing the onset of Petitioner’s symptoms in the fall of 2020 and stated “[Petitioner] gave me, exactly word for word what is in my report.” (RX 2 p. 67)

Dr. Kostman was confronted with the fact that Petitioner audio recorded his IME visit. (RX 2 pp. 67-68) He affirmed if Petitioner told him his symptoms were 100% better after Dr. Kostman’s surgery it absolutely should have made it into the report. (RX 2 p. 70) He agreed that whether Petitioner was a 100% better or had symptoms going back to January 2020 was material to what was testified to in his deposition. (RX 2, p. 70)

At trial, Petitioner testified he was doing well since his surgery with Dr. Stewart. He had returned to full-duty work and has worked in that capacity since his release from Dr. Stewart. (Tr. p. 49) He had been doing some of the same jobs that led to his problem and had been working overtime as well. *Id.* He also testified that his pay had been raised since he returned to work full duty. *Id.*

CONCLUSIONS OF LAW

The Arbitrator adopts the foregoing 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 with Respondent?

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. An employee who alleges injury based on repetitive trauma must meet the same standard of proof as other claimants alleging an accidental injury, in that “*there must be a showing that the injury is work related and not the result of normal degenerative aging process.*” *Peoria County Belwood Nursing Home v. Industrial Comm’n*, 115 Ill.2d 524, 530, 505 N.E.2d 1026, 1028 (1987). There is no requirement that a certain percentage of time be spent on a task in order for the [claimant’s work] duties to meet the legal definition of repetitive. *Edward Hines Precision Components v. Industrial Comm’n*, 356 Ill.App.3d 194, 825 N.E.2d 773, 780 (1987).

Petitioner’s ulnar nerves subluxation and corresponding ulnar neuritis, were not the result of the normal degenerative aging process, nor the result of some outside activity. Based on the totality of the medical evidence and testimony, Petitioner’s ulnar neuritis is the direct result of the physical demands placed on his upper extremities over the course of his work with Respondent in the aftermath of his surgeries with Dr. Krummenacher. Dr. Stewart testified to the exact mechanism of the upper extremities that cause and contribute to cause the ulnar nerve to sustain tension and slide or snap out of its groove. Having reviewed the job descriptions, Petitioner’s testimony, Dr. Kostman’s testimony and Dr. Stewart’s, it is readily apparent that Petitioner’s work was the inciting cause of his ulnar nerves subluxing. Petitioner’s daily job

duties required the exact movements and mechanisms, under substantial weight and force described by Dr. Stewart. Moreover, Petitioner's brief exit from his job duties from 3/31/2021 – 4/21/2021 further support it was his work that was causing his repetitive injury and the manifestation of his symptoms.

Petitioner's testimony was unrebutted and consistent with the paper records submitted into evidence that documented the extent of lifting, dragging, and pulling he does as part of his day-to-day demands from Respondent. He specifically testified that this activity happened throughout his shift and took place hundreds of times. The activity, coupled with Dr. Stewart's testimony describing the anatomy and consequence of the activity supports that his physical demands were the cause of state of ill-being, necessitated the surgical intervention he underwent in 2022 at the hands of Dr. Stewart.

The Arbitrator finds that Petitioner's job is demanding and repetitive, and accordingly concludes that he suffered accidental injuries arising out of and in the course of his employment with Respondent.

Issue (F): Is Petitioner's current condition of illbeing, specifically his bilateral ulnar neuritis, causally related to the accident?

As to causation, an accident need not be the sole or primary cause as long as employment is a cause of claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 205 (2003). The Supreme Court in *Durand v. Indus. Comm'n* noted that the purpose of the Illinois Workers' Compensation Act is best served by allowing compensation where an injury is gradual but linked to the employee's work. *Durand v. Indus. Comm'n*, 862 N.E.2d 918, 925 (Ill. 2006).

The Appellate Court's decision in *Edward Hines Precision Components v. Indus. Comm'n* highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "[t]here is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. The Commission noted in *Dorhesca Randell v. St. Alexius Medical Center*, 13 I.W.C.C. 0135 (2013), a repetitive trauma claim, a claimant must show that work activities are a cause of his or her condition; the claimant does not have to establish that the work activities are the sole or primary cause, and there is no requirement that a claimant must spend a certain amount of time each day on a specific task before a finding of repetitive trauma can be made. *Randell* citing *All Steel, Inc. v. Indus. Comm'n*, 582 N.E.2d 240 (1991) and *Edward Hines supra*.

Dr. Kostman opined that Petitioner's work duties did not cause or contribute to his bilateral ulnar subluxation and the corresponding neuritis. It would appear from a whole reading of his testimony, that Dr. Kostman was of the opinion Petitioner was not suffering

from bilateral ulnar nerve subluxation, nor recurrent cubital tunnel syndrome. Interestingly, Dr. Kostman, despite opining as much, then opined it would be reasonable for Petitioner to undergo the surgeries Dr. Stewart proposed. It is perplexing that he believes surgery is indicated and reasonable, but yet does not believe Petitioner had the conditions for which surgery was being recommended in the first place.

Dr. Stewart on the other hand, explained in great detail how and why the ulnar nerves subluxing and the consequence of that subluxation. The objective evidence on MRIs, as well as Dr. Stewart's repeated documentation of the nerve sliding on examination, further support the repetitive flexing to 45 degrees, especially underweight, caused the tension to his ulnar nerves. Subjectively, Petitioner's complaints remained, with the exception of the one 3-week window when he was off-work, suggesting his work was contributing to cause the ulnar neuritis. As further support, his elbow MRIs demonstrated objective evidence that confirmed Dr. Stewart's differential diagnoses of recurrent bilateral cubital tunnel v. ulnar neuritis secondary to ulnar nerve subluxation. The positive outcome from the surgeries themselves, especially given Petitioner's return to his extremely arm and hand intensive duties, wholly support Dr. Stewart was correct in the cause of Petitioner's, both from a medical anatomy standpoint as well as an occupational causation assessment.

Given Petitioner's un rebutted testimony and explanation of his job duties, including the hundreds of times a day he is required to repetitively bend his elbows to lift and pull materials under tension, there is no question Petitioner's work duties invoke and mandate the very specific movements Dr. Stewart testified to. The Arbitrator also takes note of Petitioner's substantial improvement from 3/31/2021 – 4/21/2021 when he was out of work. Taken as a whole and in light of the review of testimony from both physicians, the Arbitrator places substantially more weight on Dr. Stewart's opinions and finds them to be well founded, reasoned and reliable.

Therefore, the Arbitrator concludes Petitioner's condition of ill-being, bilateral ulnar neuritis secondary to subluxation was caused by his 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?

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

Dr. Stewart and Dr. Kostman both agreed that conservative treatment provided by Dr. Stewart was reasonable. He also agreed surgery in the form of bilateral ulnar nerve transpositions was reasonable to undertake. Petitioner ultimately underwent those surgeries.

The parties stipulated and submitted into evidence the 8(j) ledger for group payments (RX 9) as well as Petitioner's out-of-pocket and unpaid medical bills. (PX 7).

Respondent shall hold Petitioner harmless for any claims from Petitioner's health insurance pursuant to 8(j). Respondent shall reimburse Petitioner \$1,502.90 for out-of-pocket expenses and pay to Petitioner \$139.81, representing the unpaid and outstanding medical bills. (PX 7 p. 1)

Issue (K): What temporary benefits are in dispute? Is Petitioner entitled to any Temporary Total Disability from 3/31/2021 – 4/21/2021 and 11/2/2022 -2/5/2023.

Petitioner was placed on restrictions by Dr. Stewart beginning on 3/31/2021. Respondent did not accommodate Petitioner's light duty restrictions, and therefore he was off-work. In the aftermath of his right and left-sided ulnar nerve transpositions, Petitioner was off-work or otherwise restricted and unaccommodated from 11/2/2022 – 2/5/2023. In total, Petitioner alleged 16 6/7th weeks in temporary total disability.

Given the findings and conclusions regarding accident, causation and the prior settlement contract, the Arbitrator finds that Petitioner is entitled to TTD for the periods of 3/31/2021-4/21/2021 and 11/2/2022 – 2/5/2023, 16 6/7ths weeks, or \$10,372.28. The parties stipulated that Respondent had previously paid \$5,448.22 in nonoccupational indemnity disability benefits for which Respondent shall receive credit.

In light of that, the Arbitrator awards Petitioner \$4,884.15 in "new money" TTD and Respondent shall hold Petitioner harmless for any claims by the nonoccupational disability provider for amounts it previously paid to Petitioner pursuant to 8(j).

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

While consideration is not given to any single enumerated factor as the sole determinant, the Arbitrator relies on the following five factors pursuant to 820 ILCS 305/8.1(b).

(1) Impairment Report prepared by a physician using the most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment."

No physician provided an impairment rating. Therefore, the Arbitrator gives no weight to this factor.

(2) The occupation of the injured employee at the time of the injury.

Petitioner's occupation at the time of his injury was that of Unload/Pulloff for Respondent. Petitioner testified to the nature of the work duties for Unload/Pulloff at the time of his injury. Further, with consideration for Petitioner's testimony, as well as the job descriptions submitted into evidence, Petitioner has worked a number of different jobs over his course of time with Respondent. A review of Petitioner's testimony and job description makes it plainly apparent his jobs involve a significant amount of lifting, dragging and generally, manual labor. The Arbitrator places some weight on this factor.

(3) The age of the employee at the time of the injury.

Petitioner was 34 years of age at the time of the injury, which is extremely young given his future work-life expectancy. The Arbitrator places weight on this factor.

(4) The employee's future earning capacity.

Petitioner received raises since his injury and has otherwise not been restricted from performing his full-duty work duties. He has been doing work for Respondent in his usual capacity since his release from Dr. Stewart's care. The Arbitrator places some weight on this factor.

(5) Evidence of disability corroborated by the treating medical records.

Petitioner's clinical examinations, sensory examinations and bilateral elbow MRIs confirm that Petitioner was suffering from bilateral ulnar neuritis secondary to his nerves subluxing. His surgery ultimately led to the change in the anatomy and a burying of his nerve in the muscle body to protect it from subluxing. Petitioner testified that he had a good outcome from his surgeries performed by Dr. Stewart with only some post-operative soreness noted in his final visit. The Arbitrator places some weight on this factor.

As noted herein, in 2020 Petitioner received 15% loss of use of his right arm and 12.5% of his left arm. Respondent is entitled to credit for the same. Based on the factors enumerated above and with consideration for the credits of 15% and 12.5%, respectively, Respondent shall pay Petitioner 7.5% (18.95 weeks) loss of use of the right arm and 5% (12.65 weeks) loss of use of the left arm. Based on a PPD rate of \$553.78, Respondent shall pay Petitioner \$17,499.45 in permanent partial disability.

Disputed Issue O – Is Petitioner's Claim Barred by his prior settlement contract from 20WC010584

Respondent alleged that Petitioner's prior settlement contract from 20WC010584 is a bar to his current claim. In looking to the language in the settlement contract, the relevant language from the terms is as follows:

Respondent to pay and Petitioner to accept the sum of \$63,371.86 representing 15% PPD of the right arm/elbow (\$21,833.39), 12.5% of the left arm/elbow (\$18,194.50), 11.5% PPD of the right hand/wrist (\$12,570.74) 10% PPD of the left hand/wrist (\$10,931.08) . . . in full and final settlement of any and all claims under the Workers' Compensation and Occupational Disease Acts for all accidental injuries allegedly incurred herein, including all claims to date and including any and all results or developments, aggravations, fatal or non-fatal, allegedly resulting from such accidental injuries This settlement is based on petitioner's present condition This settlement includes all workers' compensation claims for this incident in any applicable jurisdiction (RX 1, p. 2-3)

On page 1 of the Lump Sum Settlement Contract, the document lists 3/13/2019 as the date of injury and addressed TTD payments from 8/6/2019 – 10/21/2019. (RX 1 p. 1)

Where the contract is clear, its interpretation is a question of law to be determined only from the terms of the contract itself. *Countryman v. The Industrial Comm'n, et. al.*, 292 Ill.App.3d 738, 741; 686 N.E.2d 61, 63 (2nd Dist. 1997)(citing *United Equitable Insurance Co. v. Reinsurance Co. of N. America, Inc.*, 157 Ill.App.3d 724, 728-729 (1987)) Where the contract is ambiguous, its interpretation is generally a question of fact subject to rules of contract construction and parol evidence. *Countryman*, 292 Ill.App.3d 738 at 741; 686 N.E.2d 61, at 63-4. A contract is ambiguous where the language employed is susceptible to more than one reasonable meaning or obscure in meaning through indefiniteness of expression. *Countryman*, 292 Ill.App.3d at 741; 686 N.E.2d at 63-4. Where there is an ambiguity and if, after considering the contract language in light of parol evidence and rules of construction, doubt still remains as to the meaning of the contract, then the question of interpretation must be left to the trier of fact. *Countryman*, 292 Ill.App.3d 738,

Pertinent rules of construction provide that where an ambiguity exists in a contract due to a conflict between two of its provisions, the more specific provision relating to the same subject matter controls over the more general provision. *Countryman*, 292 Ill.App.3d 738 at 741; 686 N.E.2d 61, at 6. If, however, the contract is susceptible to only one meaning when considered in light of parol evidence and rules of the construction, the court may interpret the contract itself. *Countryman*, 292 Ill.App.3d at 741; 686 N.E.2d at 741.

The Arbitrator finds that consistent with the case law, including *Countryman*, that the contract is ambiguous. Given as much, the terms of the contract as well as parol evidence are considered.

In the case at bar, RX 1, p. 1, lists the specific date of accident as 3/13/2019. The details on the face of the contract are all applicable to the 3/13/2019 date of injury. In the terms of the contract, there is release language that states that the settlement is “full and final settlement of any and all claims under the Workers' Compensation and Occupational Diseases Acts for all accidental injuries allegedly incurred herein . . .” “Herein” is defined by the dictionary as “in this.” In this,

has to be a reference to the settlement document and naturally incorporates the accidental injury listed from 3/13/2019 on the face of the LSSC. After all, that was the case that was being settled.

Broader general release terms continue in that sentence stating, “including all claims to date and including any and all results or developments, aggravations, fatal or non-fatal, allegedly resulting from such accidental injuries.” The contract clearly contemplated other injuries or incidents that Petitioner may have had pending “to date.” Certainly, there is no evidence that Petitioner’s ulnar nerve subluxation and corresponding neuritis was at issue. The testimony and medical records make this quite clear. When Petitioner was treated on 8/17/2020 by Dr. Atwood, there was no indication of his condition. There was no allegation that Petitioner had filed a new claim, reported injuries or had notice of any potential claim at the time the settlement was approved on 6/5/2020.

On the last page of the contract, it then states, “this settlement is based on petitioner’s present condition.” The overwhelming evidence as of 6/5/2020, is the contract was in settlement of his bilateral carpal and cubital tunnel syndrome as that was the only present condition for which Petitioner was suffering from or otherwise had ongoing as a result of his “accidental injuries listed herein.”

The contract, on page 3, then goes on to state, “[t]his settlement includes all workers’ compensation claims for this accident in any applicable jurisdiction.” (Emphasis added) Illinois is an “applicable” jurisdiction for the claim. That language is very specific and the reference to “this accident” is unquestionably a reference to the 3/13/2019 accident for which the LSSC was submitted for approval.

On the face of the document, the contract has specific and general terms. Consistent with case law, the contract is ambiguous. Where an ambiguity exists in a contract due to a conflict between two of its provisions, the more specific provision relating to the same subject matter controls over the more general provision. *Countryman*, 292 Ill.App.3d 738 at 741; 686 N.E.2d 61, at 6. Given as much, the Arbitrator finds that Petitioner only settled his carpal and cubital tunnel claims that had an accident date of 3/13/2019 and not his unknown and unmanifested bilateral subluxing ulnar nerves and corresponding neuritis.

Even assuming that the contract was not ambiguous with specific and general terms, Respondent’s suggestion that Petitioner’s condition is a “result,” “development,” or “aggravation” is simply not consistent with the medical testimony and the facts. The two claims involve two separate diagnoses. Petitioner was treated in 2019 for bilateral cubital tunnel. Peripheral nerve compression. Petitioner’s presentation in 1/2021, given the findings and conclusions set forth herein, is a completely different diagnosis, namely, ulnar neuritis secondary to subluxing ulnar nerves. There is no disagreement from Dr. Stewart or Dr. Kostman.

Did the cubital tunnel release make it more likely his ulnar nerves could sublux? Based on the medical testimony, it did. However, per Dr. Kostman, he would expect any post-operative subluxation to be present during the post-operative course. There is no evidence to support that is

the case here. However, Dr. Stewart's testimony is very clear. Had Petitioner retired and not gone back to work, it was unlikely he would have spontaneously started subluxing, absent substantial physical activity. Had Petitioner gone back to work as a "desk jockey," Dr. Stewart opined it would be unlikely he would experience the subluxation and corresponding ulnar neuritis.

"Result" is defined as a consequence, effect or outcome of something. There is no support in the record that anything other than his work duties, at or near the time his symptoms developed in 9/2020, were the cause of his state of ill-being. "Development" is the process of developing or being developed, or the process of starting to experience or suffer from an ailment or feeling. He is not suffering from residual cubital tunnel. "Aggravation" is an act or circumstance that intensifies something worse. Petitioner was asymptomatic. He had a great outcome by all medical evidence from his treatment with Dr. Krummenacher. There was nothing to make sore or intensify. It was an entirely new anatomical condition and injury that caused his symptoms. Dr. Kostman specifically opined that Petitioner's problem was not related to his prior claim, nor his current claim upon his records review. His opinion changed from which he alleged "new information" but was unable to articulate what that new information was. Regardless, Dr. Kostman opined that Petitioner is only suffering from residual ulnar nerve irritation from his prior claim. This has already been addressed in this decision, but to be clear, the medical evidence does not support Dr. Kostman's opinion. It requires believing, as Dr. Kostman asserted, without medical evidence anywhere in the record, that Petitioner had symptoms from the time of Dr. Krummenacher's release forward. That is not a credible opinion, as it is not founded on fact.

A review of cases in front of the Industrial Commission in which a contract was a bar to a subsequent claim are discussed below. In the cases reviewed, the Petitioners suffered their accidental injuries before the prior settlement had taken place with general release language and then they subsequently filed their case. In *Yolanda Jones v. United Airlines, Inc.*, 12 IWCC 305; 2012 Ill.Wrk.Comp. Lexis 281, the Commission actually discussed a number of cases wherein a Petitioner's current claim was barred by a prior settlement contract.

In the *Jones* case, the Petitioner settled two cases involving low back injuries with accident dates of 9/12/07 and 8/8/2008 on 12/17/2010. However, prior to that settlement moving forward, Petitioner allegedly suffered another accident to her low back on 12/1/2010, sixteen days before the contract was approved. The contract contained general release language. Petitioner did not treat from 12/1/2010 – 12/29/2010. It was on 12/30/2010 that Petitioner sought treatment for and attributed her need for treatment to the 12/1/2010 claim. In short, her injury was known and had manifested prior to the date of settlement approval.

Similarly, in *Wieger v. United Airlines*, 09 IWCC 0698; 2009 Ill.Wrk.Comp. Lexis 819, a Petitioner alleged 6/25/2006 and 12/1/2006 workplace accidents involving her bilateral hands and thumbs. Petitioner settled those claims for 10% loss of use of the thumbs and each ring finger on 9/20/2007 with general release provisions in the contract. Shortly after the contract was approved, Petitioner filed an Application alleging injuries she incurred on 8/25/2007, which was prior to the entry of the settlement contracts. *Wieger* was decided on the doctrine of res judicata, but

nonetheless the rationale for the decision was clear from the Court. Petitioner testified on cross-examination that she had knowledge of 8/25/2007 date of incident when she executed her contract on 9/5/2007. She signed the contract with knowledge of an aggravation to both thumbs. In the case at bar, Petitioner did not have this knowledge, nor the opportunity to have the knowledge.

Blaylock v. Daimler Chrysler, 06 IWCC 1118; 2006 Ill.Wrk.Comp.Lexis 1134 was a left-sided carpal tunnel syndrome case which contained general release language. Subsequent to executing the contracts and on 2/12/2002, the claimant made new claim for left-sided carpal tunnel syndrome. In barring the case, the Commission stated, “petitioner has failed to prove he suffered a new injury or material aggravation of a pre-existing condition to the extent it would be considered a new injury as result of work activities in 2/2002.” The Commission noted that the diagnostic testing and symptoms were essentially the same. In the case at bar, from the medical evidence and testimony, Petitioner’s condition is not the same condition, nor is the cause and effect the same. Cubital tunnel is a compression neuropathy. Petitioner’s ulnar neuritis was caused by the subluxation of his ulnar nerves secondary to his work activities. It is a new diagnosis and new condition.

In *Rakowski v. Lucente*, 104 Ill.2d. 317, 472 N.E.2d 791 (1984) the Illinois Supreme Court enforced a general release term and noted, “one who purports to release all claims should clearly specify any that he intends and desires to reserve.” In the present case, Petitioner had nothing to “reserve” as the accident had not manifested and he had no identifiable medical condition.

Lastly, when the Court barred Jones’ new claim it stated, “to permit Petitioner to proceed with her 12/1/2010 claim would be to, in essence, hold Respondent received no value from the prior settlement. This is especially true due to the fact that no PPD credit is available for claims under Section 8(d)(2).” Certainly, in the case at bar, as set forth herein, Respondent is entitled to the credit for Petitioner’s prior cubital tunnel claim.

In summary, the Arbitrator finds that Petitioner’s prior workers’ compensation contract is not a bar to the instant claim.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC002600
Case Name	Augustine J Vasquez v. City of Jacksonville Illinois
Consolidated Cases	18WC026010
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0460
Number of Pages of Decision	12
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	R Mark Cosimini

DATE FILED: 11/17/2025

/s/Carolyn Doherty, Commissioner

Signature

18 WC 2600

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 SPRINGFIELD)

☒ 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Augustine Vasquez,
 Petitioner,

vs.

NO: 18 WC 2600

City of Jacksonville,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed under Section 19(b) of the Act by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary total disability, permanent partial disability, and penalties and fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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 amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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

November 17, 2025

O: 11/5/25

CMD/kcb

045

/s/ Carolyn M. Doherty
 Carolyn M. Doherty

/s/ Raychel A. Wesley
 Raychel A. Wesley

/s/ Frank J. Soto
 Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC002600
Case Name	Augustine J Vasquez v. City of Jacksonville Illinois
Consolidated Cases	18WC026010;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	R Mark Cosimini

DATE FILED: 6/27/2024

/s/ Adam Hinrichs, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 25, 2024 5.14%

STATE OF ILLINOIS)
) SS.
 COUNTY OF Springfield)

☐	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**

Augustine Vasquez

Employee/Petitioner

v.

City of Jacksonville

Employer/Respondent

Case # **18** WC **02600**

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 30, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On 9/19/17, 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.

In the year preceding the injury, Petitioner earned \$69,957.16; the average weekly wage was \$1,345.33.

On the date of accident, Petitioner was 46 years of age, *married* with 0 dependent children.

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

ORDER

Given the findings and conclusions in the companion case, 18 WC 26010, no further award or credit shall issue in this matter.

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 27, 2024

FINDINGS OF FACT

Testimony of Augustine Vasquez

The Petitioner testified that he began his employment with the Respondent in 2002 as a police officer. (AT 12). The Petitioner testified that prior to being hired for the Respondent, he passed the pre-employment physical and mental exams. (AT 12). The Petitioner further testified that he began his employment as a patrol officer, and then became a school resource officer around 2015. (AT 13). The job duties of a school resource officer included breaking up juvenile fights, and addressing theft calls and security. (AT 13). The Petitioner testified that he was still considered a law enforcement officer and would be required to report to emergency calls. (AT 14).

The Petitioner testified that prior to 2016, he had not been diagnosed with, nor received medical treatment for, post-traumatic stress disorder (PTSD). (AT 14). Petitioner testified that he was able to perform his duties as a police officer without restriction up to March 2016. (AT 15).

The Petitioner testified that on March 4, 2016, he was working as a school resource officer for Jacksonville Middle School. (AT 16). Petitioner testified that he worked at the school from 7:30 a.m. to 3:30 p.m., and then worked at the Jacksonville High School basketball game starting at 6:30 p.m. (AT 16).

On March 4, 2016, Petitioner was beginning to leave the basketball game when he heard an emergency call coming over the police dispatch. Petitioner testified that the call was for a child who was not breathing. (AT 17). Petitioner testified that he was supposed to meet his wife and in-laws at a Wendy's restaurant after the game. As he was driving towards Wendy's, he again heard the call over the radio about the emergency. The Petitioner testified that there was confusion going on with dispatch about the location of the vehicle that contained the child, and that a police car and ambulance were then involved. (AT 18).

The Petitioner testified that he got on the police radio and asked his supervisor, Eric Hansell, if he would like him to respond to the scene, Hansell replied affirmatively. (AT 20). Petitioner activated his emergency lights and sirens and responded to the scene. (AT 20).

The Petitioner testified that he drove 8 to 10 miles to get to the scene, just outside Murrayville. (AT 21). Petitioner testified that while driving to the scene, Hansell advised him to let him know the location as there was still confusion as to where it was happening. (AT 22). Petitioner came up on an emergency vehicle pulled off the side of the road, which was carrying the child. The emergency vehicle advised the Petitioner to keep going towards the scene. (AT 23-24).

The Petitioner testified that when he pulled up to the scene, there were already fire trucks and an ambulance on scene. (AT 25). A collision had occurred on an overpass. (AT 25). The Petitioner testified that he exited his vehicle and walked up to a scene of a mangled police car. Petitioner testified that Scot Fitzgerald was the officer for South Jacksonville Police Department in the mangled police car, and he later died. (AT 26).

The Petitioner testified that asked what he could do to help. He was advised that they needed to set up a landing strip for the medical helicopter. The Petitioner had done that before, so he offered to do it. (AT 27). Due to fog, the helicopter could not land at the scene. (AT 28).

The Petitioner testified that he went back to Officer Fitzgerald's vehicle and he saw that he was alive and mumbling. (AT 29). Petitioner helped load Officer Fitzgerald onto the ambulance cot where he was being transported to Passavant Area Hospital. (AT 30).

Petitioner testified that he completed his tasks at the scene and then went to the hospital to check on Officer Fitzgerald. (AT 31). Petitioner testified that he watched the hospital staff work on Officer Fitzgerald and he comforted Fitzgerald's wife upon arrival. Officer Fitzgerald was eventually airlifted to Springfield. (AT 33).

The Petitioner testified that he attended Officer Fitzgerald's funeral. Petitioner further testified that he was feeling extremely sad due to losing a police brother. (AT 36). The Petitioner testified that in the weeks after the funeral, he felt sad, disappointed and helpless. (AT 37). The Petitioner testified that he was not sleeping, eating or drinking. (AT 37).

The Petitioner testified that he went back to work immediately following the accident. (AT 38). The Petitioner testified that in the months after the accident, he was having night terrors reliving the scene and had feelings of guilt. (AT 39). The Petitioner further testified that he was experiencing intrusive thoughts, sleep disturbance, and lack of motivation. (AT 40).

The Petitioner testified that while at work, he did not share any of these feelings with his co-workers due to being embarrassed and prideful. (AT 41).

The Petitioner testified that he talked to the school counselor, Kelly Capriotti about his feelings following the accident. (AT 41). The Petitioner testified that Kelly could tell he was hurting and was persistent with him to open up about the accident. (AT 42).

The Petitioner testified that for a year following the accident, his symptoms were getting worse. (AT 43). Petitioner further testified that Kelly convinced him to reach out to her husband as he could relate to what he was going through. (AT 43). After talking with Kelly's husband, the Petitioner felt he needed to seek medical treatment. (AT 43).

The Petitioner testified that he talked to Cheryl Cooper in HR about seeking medical treatment. (AT 44-45). Cheryl recommended the Petitioner seeks treatment with a counselor, Bradley Breeman. (AT 44).

The Petitioner testified that in September 2017, the school made a request that Petitioner be removed as a school resource officer and be put back on the streets as a patrol officer. (AT 48). Petitioner testified that a meeting was held with him and the chief to discuss this job change. The Petitioner's phone had belonged to the City of Jacksonville and the chief indicated that some text messages were found that seemed concerning. The Petitioner testified that the chief was worried about him and wanted him to see somebody. (AT 50).

The Petitioner testified that at that time he felt embarrassed, and agreed to get help. (AT 50). The Petitioner testified that the chief advised him to take some time off and that he would get ahold of a doctor to schedule him. (AT 51).

The Petitioner testified that the chief contacted Dr. Campion. (AT 51). Dr. Campion referred Petitioner to Dr. Shapiro as his symptoms correlated with PTSD. (AT 53).

The Petitioner testified that while treating with Dr. Shapiro, he reported experiencing symptoms of nightmares, feelings of frustration, impatient, distancing from others, easily triggered and startled. (AT 53-54). The Petitioner testified that in September 2017, Dr. Shapiro reported that he would not be going back to work at that time and diagnosed him with chronic PTSD. (AT 55).

The Petitioner testified that in September 2018, the City of Jacksonville separated themselves from the Petitioner. (AT 58). The Petitioner testified that when Dr. Shapiro took him off work, he was required to use his sick and personal time from September 19, 2017 to February 8, 2018. (AT 58). The Petitioner testified that from February 8, 2018 through the date of termination, he was paid PEDA, full salary. (AT 59). Petitioner further testified that PEDA ended on September 8, 2018. After September 8, 2018, the Petitioner received no income. (AT 59).

The Petitioner testified that he filed for line of duty disability pension benefits. (AT 59). The Petitioner was awarded his line of duty Pension benefits at a hearing held on October 8, 2020. (AT 60).

After October 2020, the Petitioner testified that he continued medical treatment and medications for his ongoing symptoms. (AT 61).

The Petitioner testified that in January 2017, he attempted to commit suicide. (AT 62). The Petitioner further testified that he was tired of feeling hopeless. (AT 62). The Petitioner testified that he attempted a second suicide attempt later in 2017. (AT 63). The Petitioner testified that he had never had thoughts of suicide or experienced any PTSD symptoms prior to the work accident. (AT 62).

The Petitioner testified that under the recommendation of Dr. Shapiro, he attended Warriors' Ascent in Kansas City. The Petitioner testified that it is a holistic healing program designed for military and law enforcement. (AT 65).

The Petitioner testified that at the time of trial, he is still taking Sertraline, Clonidine and Gabapentin daily for his PTSD. (AT 68). The Petitioner further testified that he is still under the care of Dr. Saini and has not been released to return to work by any medical provider. (AT 68).

The Petitioner testified that he still experiences night terrors, and places a big pillow between him and his wife when they sleep, as she is fearful. (AT 71). The Petitioner further testified that he has a service dog that alerts him or his wife when he is having a night terror so to not hurt himself or his wife. (AT 71).

On cross-examination, the Petitioner testified that after the accident, he lost the feeling of happiness. (AT 98). The Petitioner further testified that prior to the injury he was a happy and sappy man, but now he feels symptoms of depression even during what would be happy times. (AT 99).

The Petitioner testified that during the 18-month period after the accident, while he was working as a school resource officer, his symptoms never went away. (AT 104).

The Petitioner testified that at the time of trial, he still experiences PTSD episodes. The Petitioner further testified that these episodes are unpredictable and can be scenes where he is reliving the accident. (AT 106-107). The Petitioner testified that he has made progress and is hopeful for the future. (AT 108).

Testimony of Rodney Cox

Rodney Cox testified that he has been employed with the Respondent for 27 years. Mr. Cox testified that since 2015, he has been the Deputy Chief (DC). (AT 111). DC Cox testified that in 2016, his job duties consisted of overseeing civilians, school resource officers, and investigators. (AT 111).

DC Cox testified that he communicated with the Petitioner about once a week regarding upcoming training, and any issues that arose at the school. (AT 112). DC Cox testified that the Petitioner did not come forward to him immediately after the accident, or in the 18-month period after, about the symptoms he was experiencing (AT 114). DC Cox testified that he was made aware about the Petitioner's mental health issues during the investigation of removing the Petitioner from the school in September 2017. (AT 117).

On cross-examination, DC Cox testified that he believes the Petitioner to be a credible and hard-working person. (AT 119). DC Cox testified that this incident in 2016 was the first time an officer was killed in the line of duty in Jacksonville and South Jacksonville. (AT 119).

Testimony of Adam Mefford

Adam Mefford testified he is currently employed by the Respondent as Chief of Police (CP), and has been since March 26, 2017. (AT 128). CP Mefford testified that on March 4, 2016, he was employed by the Respondent as Lieutenant of Investigations. (AT 128).

CP Mefford testified that the protocol for reporting an injury is that the injury is to be reported immediately to the nearest supervisor. (AT 131). CP Mefford testified that prior to September 2017, the Petitioner had not mentioned any mental health issues he was having to him. (AT 132). CP Mefford testified that in September 2017, he received a call from the superintendent of the school requesting a meeting to discuss allegations against the Petitioner (AT 133).

CP Mefford testified that an investigation took place and it was determined that the Petitioner would be removed from the school resource officer position. (AT 135).

CP Mefford testified that during the investigation, texts were revealed and indicated that Petitioner was having mental health issues (AT 137). Mefford testified that he and the Petitioner had a discussion about his mental health at that time, and Mefford suggested Petitioner take time off in an effort to help his mental health. (AT 138-139).

CP Mefford testified that he called the police psychologist, Dr. Champion, about Petitioner's mental health issues. Dr. Champion referred Petitioner to Dr. Shapiro for further evaluation. (AT 140). CP Mefford testified that he would receive off work notes from Dr. Shapiro's office while Petitioner was treating there. (AT 143).

On cross-examination, CP Mefford testified that the Petitioner is a credible person. (AT 146). Mefford testified that the accident in question was a traumatic and tragic event involving police officers. (AT 146-147).

CP Mefford testified that the text messages he encountered were alarming enough to contact Dr. Champion. (AT 148). Mefford confirmed that while Petitioner was treating with Dr. Shapiro, he was not released back to work as a police officer. (AT 148).

Medical Treatment, Section 12 Exams, and Pension Disability Hearing

The Petitioner presented to Bradley Breneman LCSW (Licensed Clinical Social Worker) at Memorial Counseling Associates for sessions from January 16, 2017 to June 12, 2017. (PX 16)

The Petitioner presented to Dr. Larry Shapiro, Ph.D., at St. Louis Behavioral Health for an initial evaluation on September 14, 2017. Dr. Shapiro diagnosed the Petitioner with Post-Traumatic Stress Disorder (PTSD). Dr. Shapiro referred Petitioner to Dr. Sindhura Saini for psychiatric evaluation. (PX 6, p. 318-319).

On September 19, 2017, Dr. Saini noted a history of Petitioner being at the scene when another officer died in May 2016. He noted Petitioner complained of intrusive thoughts of horrific events Petitioner had in the past including seeing a neighbor's son hang himself and holding a kid's brains in his hands. Petitioner further reported that in the summers when not working as a school resource officer, he feels more vigilant. Dr. Saini diagnosed PTSD, and prescribed medication and psychotherapy. (PX 6, p. 297-298)

Petitioner continued to follow up with Dr. Shapiro and Dr. Saini, with ongoing complaints, but with signs of improvement over time with the treatment and medication. (PX 6).

Dr. Shapiro wrote a letter to Petitioner's prior attorney, John Boshardy, indicating Petitioner's diagnosis of PTSD. Dr. Shapiro noted there was no agreed upon timeline for the resolution of PTSD symptoms in the literature. Dr. Shapiro could not make a prediction as to if or when Petitioner may return to his job duties as a police officer. (PX 22, p. 1500)

On September 27, 2018, the Petitioner presented to Dr. Stephen Peterson, M.D., for a Section 12 examination requested by the Respondent. The Petitioner provided a history of the work accident and his symptoms. Dr. Peterson diagnosed the Petitioner with PTSD, an adjustment disorder with mixed disturbance of emotions and conduct. Dr. Peterson recommended the Petitioner undergo trauma focused cognitive processing therapy. Dr. Peterson found that the Petitioner's diagnoses were causally related to the accident of March 4, 2016 and opined that Petitioner could not return to work as a police officer. (PX 23).

On January 21, 2019, Dr. Shapiro wrote a letter to Petitioner indicating that he could engage in low stress part-time work, which would be beneficial to Petitioner's mental health. Dr. Shapiro wrote that Petitioner could not return to work in law enforcement. (PX 6, p. 121)

On October 8, 2020, the Jacksonville Police Pension Board found Petitioner to be entitled to a disability pension as a consequence of his PTSD related to the March 4, 2016 incident, which prevented Petitioner from performing the functions of a Police Officer. (PX 18, p. 1193)

On May 18, 2022, the Petitioner presented to Dr. David Fletcher, M.D., for a Section 12 examination requested by Petitioner's counsel. The Petitioner provided a history of the work accident and his symptoms. Dr. Fletcher diagnosed the Petitioner with PTSD and major depression. Dr. Fletcher opined that the traumatic event of March 4, 2016 was the triggering event for Petitioner's PTSD. Dr. Fletcher opined that Petitioner was nearing MMI, recommended a trial of Eye Movement Desensitization and Reprocessing (EMDR), opined that Petitioner was not disabled from all work, but was disabled from working as a police officer. (PX 3).

On March 30, 2023, the Petitioner presented to Dr. Lauren Marks, M.D., for a second Section 12 examination at the request of the Respondent. The Petitioner provided a history of the work accident and his symptoms. Dr. Marks reviewed the medical records in this case. Dr. Marks found that the Petitioner had received reasonable and necessary medical treatment from his providers. Dr. Marks diagnosed the Petitioner with PTSD, found that he had reached MMI, and recommended that he continue to take his medications. Dr. Marks opined that the Petitioner's diagnosis of PTSD is a direct result of the traumatic event on March 4, 2016. (PX 2).

Dr. Philip Pan Testimony

Dr. Pan testified during an evidence deposition on August 6, 2021. Dr. Pan testified that he examined the Petitioner at the request of the Pension board. Dr. Pan testified that he reviewed the medical records provided to him and examined the Petitioner. Dr. Pan diagnosed the Petitioner with PTSD as a consequence of the triggering event at work in March 2016. (PX 9, p. 474).

Dr. Pan testified that with a diagnosis of PTSD, it is not unusual that symptoms develop gradually. In fact, Dr. Pan further testified that PTSD symptoms generally begin or get worse some time after the actual trauma. (PX 9, p. 30-31)

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Dr. Jeckel testified that he performed a thorough investigation of Petitioner's "experiences throughout the trauma, his lifestyle...medications...family problems, marital problems. We try to cover everything of the person's experience" as well as a thorough psychiatric evaluation, making sure there is nothing for Petitioner to hide. (PX 7, p. 328). Dr. Jeckel testified that he diagnosed the Petitioner with PTSD which was directly related to the incident on March 4, 2016. (PX 7, p. 345-348).

Dr. Jeckel testified that all medical treatment and medications Petitioner had received were reasonable, necessary and related to his PTSD diagnosis. (PX 7, p. 349) Dr. Jeckel further testified that the Petitioner was not able to return to work as police officer at the time he signed a certificate stating the same for the pension board, but he could not predict if Petitioner may one day be able to return if he makes progress in his treatment. (PX 7, 350-351).

Dr. Jeckel testified that PTSD can take time to manifest, noting Iraq War veterans as an example, and described the experience of PTSD as a psychological shattering, and the recovery as a putting back together of the pieces. (PX 7, p. 356-357, 366-367).

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Dr. Fletcher testified during an evidence deposition on September 14, 2022. Dr. Fletcher testified consistent with his report, finding Petitioner's PTSD and major depression related to the March 2016 triggering incident. (PX 8, p. 400, 406). Dr. Fletcher testified that PTSD is usually "insidious and gradual" after a triggering event. (PX 7, p. 400).

Dr. Fletcher testified that the Petitioner could not return to work as a police officer but could return to gainful employment. (PX 8, p. 410). Dr. Fletcher further testified that the care and treatment the Petitioner has received for his PTSD diagnosis is reasonable, necessary and causally related to the incident of March 4, 2016, and again recommended Petitioner undergo a course of EMDR. (PX 8, p. 409-410).

CONCLUSIONS OF LAW

Given the conclusions in the companion case, 18 WC 26010, no further award or credit shall issue in this matter.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC026010
Case Name	Augustine J Vasquez v. City of Jacksonville Illinois
Consolidated Cases	18WC002600
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0461
Number of Pages of Decision	17
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kisa Sthankiya

DATE FILED: 11/17/2025

/s/Carolyn Doherty, Commissioner

Signature

18 WC 26010

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 SPRINGFIELD)

☒ 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Augustine Vasquez,
 Petitioner,

vs.

NO: 18 WC 26010

City of Jacksonville,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed under Section 19(b) of the Act by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, temporary total disability, TTD credit, maintenance, permanent partial disability, and penalties and fees, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

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

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.

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.

November 17, 2025

O: 11/5/25

CMD/kcb

045

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

/s/ Frank J. Soto

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC026010
Case Name	Augustine J Vasquez v. City of Jacksonville Illinois
Consolidated Cases	18WC002600;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	R Mark Cosimini

DATE FILED: 6/27/2024

/s/ Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 25, 2024 5.14%

STATE OF ILLINOIS)
) SS.
 COUNTY OF Springfield)

☐	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

Augustine Vasquez

Employee/Petitioner

v.

City of Jacksonville

Employer/Respondent

Case # **18** WC **26010**

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 30, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On 3/4/2016, 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 **\$65,305.76**; the average weekly wage was **\$1,233.97**.

On the date of accident, Petitioner was **45** years of age, *married* 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 **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$34,986.59** in other benefits, for a total credit of **\$34,986.59**.

ORDER

Respondent shall pay the Petitioner TTD benefits from September 19, 2017 through May 18, 2022, or 243 and 1/7 weeks, at his weekly rate of \$822.64. Respondent is entitled to a full credit for all benefits previously paid.

The Respondent shall pay permanent partial disability benefits of \$740.38/week for 175 weeks, because the injuries sustained caused a 35% loss of use to Petitioner's man as a whole, pursuant to Section 8(d)2.

Respondent shall pay Petitioner compensation that has accrued from May 18, 2022, through the date of this award, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay all medical charges related to this claim, for Petitioner's reasonable and necessary medical treatment, as outlined in Petitioner's Exhibit 10. 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.

Respondent shall provide and pay for Petitioner's ongoing reasonable, necessary and related follow up psychiatric visits, medications, and EMDR.

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 27, 2024

FINDINGS OF FACT

Testimony of Augustine Vasquez

The Petitioner testified that he began his employment with the Respondent in 2002 as a police officer. (AT 12). The Petitioner testified that prior to being hired for the Respondent, he passed the pre-employment physical and mental exams. (AT 12). The Petitioner further testified that he began his employment as a patrol officer, and then became a school resource officer around 2015. (AT 13). The job duties of a school resource officer included breaking up juvenile fights, and addressing theft calls and security. (AT 13). The Petitioner testified that he was still considered a law enforcement officer and would be required to report to emergency calls. (AT 14).

The Petitioner testified that prior to 2016, he had not been diagnosed with, nor received medical treatment for, post-traumatic stress disorder (PTSD). (AT 14). Petitioner testified that he was able to perform his duties as a police officer without restriction up to March 2016. (AT 15).

The Petitioner testified that on March 4, 2016, he was working as a school resource officer for Jacksonville Middle School. (AT 16). Petitioner testified that he worked at the school from 7:30 a.m. to 3:30 p.m., and then worked at the Jacksonville High School basketball game starting at 6:30 p.m. (AT 16).

On March 4, 2016, Petitioner was beginning to leave the basketball game when he heard an emergency call coming over the police dispatch. Petitioner testified that the call was for a child who was not breathing. (AT 17). Petitioner testified that he was supposed to meet his wife and in-laws at a Wendy's restaurant after the game. As he was driving towards Wendy's, he again heard the call over the radio about the emergency. The Petitioner testified that there was confusion going on with dispatch about the location of the vehicle that contained the child, and that a police car and ambulance were then involved. (AT 18).

The Petitioner testified that he got on the police radio and asked his supervisor, Eric Hansell, if he would like him to respond to the scene, Hansell replied affirmatively. (AT 20). Petitioner activated his emergency lights and sirens and responded to the scene. (AT 20).

The Petitioner testified that he drove 8 to 10 miles to get to the scene, just outside Murrayville. (AT 21). Petitioner testified that while driving to the scene, Hansell advised him to let him know the location as there was still confusion as to where it was happening. (AT 22). Petitioner came up on an emergency vehicle pulled off the side of the road, which was carrying the child. The emergency vehicle advised the Petitioner to keep going towards the scene. (AT 23-24).

The Petitioner testified that when he pulled up to the scene, there were already fire trucks and an ambulance on scene. (AT 25). A collision had occurred on an overpass. (AT 25). The Petitioner testified that he exited his vehicle and walked up to a scene of a mangled police car. Petitioner testified that Scot Fitzgerald was the officer for South Jacksonville Police Department in the mangled police car, and he later died. (AT 26).

The Petitioner testified that asked what he could do to help. He was advised that they needed to set up a landing strip for the medical helicopter. The Petitioner had done that before, so he offered to do it. (AT 27). Due to fog, the helicopter could not land at the scene. (AT 28).

The Petitioner testified that he went back to Officer Fitzgerald's vehicle and he saw that he was alive and mumbling. (AT 29). Petitioner helped load Officer Fitzgerald onto the ambulance cot where he was being transported to Passavant Area Hospital. (AT 30).

Petitioner testified that he completed his tasks at the scene and then went to the hospital to check on Officer Fitzgerald. (AT 31). Petitioner testified that he watched the hospital staff work on Officer Fitzgerald and he comforted Fitzgerald's wife upon arrival. Officer Fitzgerald was eventually airlifted to Springfield. (AT 33).

The Petitioner testified that he attended Officer Fitzgerald's funeral. Petitioner further testified that he was feeling extremely sad due to losing a police brother. (AT 36). The Petitioner testified that in the weeks after the funeral, he felt sad, disappointed and helpless. (AT 37). The Petitioner testified that he was not sleeping, eating or drinking. (AT 37).

The Petitioner testified that he went back to work immediately following the accident. (AT 38). The Petitioner testified that in the months after the accident, he was having night terrors reliving the scene and had feelings of guilt. (AT 39). The Petitioner further testified that he was experiencing intrusive thoughts, sleep disturbance, and lack of motivation. (AT 40).

The Petitioner testified that while at work, he did not share any of these feelings with his co-workers due to being embarrassed and prideful. (AT 41).

The Petitioner testified that he talked to the school counselor, Kelly Capriotti about his feelings following the accident. (AT 41). The Petitioner testified that Kelly could tell he was hurting and was persistent with him to open up about the accident. (AT 42).

The Petitioner testified that for a year following the accident, his symptoms were getting worse. (AT 43). Petitioner further testified that Kelly convinced him to reach out to her husband as he could relate to what he was going through. (AT 43). After talking with Kelly's husband, the Petitioner felt he needed to seek medical treatment. (AT 43).

The Petitioner testified that he talked to Cheryl Cooper in HR about seeking medical treatment. (AT 44-45). Cheryl recommended the Petitioner seeks treatment with a counselor, Bradley Breeman. (AT 44).

The Petitioner testified that in September 2017, the school made a request that Petitioner be removed as a school resource officer and be put back on the streets as a patrol officer. (AT 48). Petitioner testified that a meeting was held with him and the chief to discuss this job change. The Petitioner's phone had belonged to the City of Jacksonville and the chief indicated that some text messages were found that seemed concerning. The Petitioner testified that the chief was worried about him and wanted him to see somebody. (AT 50).

The Petitioner testified that at that time he felt embarrassed, and agreed to get help. (AT 50). The Petitioner testified that the chief advised him to take some time off and that he would get ahold of a doctor to schedule him. (AT 51).

The Petitioner testified that the chief contacted Dr. Campion. (AT 51). Dr. Campion referred Petitioner to Dr. Shapiro as his symptoms correlated with PTSD. (AT 53).

The Petitioner testified that while treating with Dr. Shapiro, he reported experiencing symptoms of nightmares, feelings of frustration, impatient, distancing from others, easily triggered and startled. (AT 53-54). The

Petitioner testified that in September 2017, Dr. Shapiro reported that he would not be going back to work at that time and diagnosed him with chronic PTSD. (AT 55).

The Petitioner testified that in September 2018, the City of Jacksonville separated themselves from the Petitioner. (AT 58). The Petitioner testified that when Dr. Shapiro took him off work, he was required to use his sick and personal time from September 19, 2017 to February 8, 2018. (AT 58). The Petitioner testified that from February 8, 2018 through the date of termination, he was paid PEDA, full salary. (AT 59). Petitioner further testified that PEDA ended on September 8, 2018. After September 8, 2018, the Petitioner received no income. (AT 59).

The Petitioner testified that he filed for line of duty disability pension benefits. (AT 59). The Petitioner was awarded his line of duty Pension benefits at a hearing held on October 8, 2020. (AT 60).

After October 2020, the Petitioner testified that he continued medical treatment and medications for his ongoing symptoms. (AT 61).

The Petitioner testified that in January 2017, he attempted to commit suicide. (AT 62). The Petitioner further testified that he was tired of feeling hopeless. (AT 62). The Petitioner testified that he attempted a second suicide attempt later in 2017. (AT 63). The Petitioner testified that he had never had thoughts of suicide or experienced any PTSD symptoms prior to the work accident. (AT 62).

The Petitioner testified that under the recommendation of Dr. Shapiro, he attended Warriors' Ascent in Kansas City. The Petitioner testified that it is a holistic healing program designed for military and law enforcement. (AT 65).

The Petitioner testified that at the time of trial, he is still taking Sertraline, Clonidine and Gabapentin daily for his PTSD. (AT 68). The Petitioner further testified that he is still under the care of Dr. Saini and has not been released to return to work by any medical provider. (AT 68).

The Petitioner testified that he still experiences night terrors, and places a big pillow between him and his wife when they sleep, as she is fearful. (AT 71). The Petitioner further testified that he has a service dog that alerts him or his wife when he is having a night terror so to not hurt himself or his wife. (AT 71).

On cross-examination, the Petitioner testified that after the accident, he lost the feeling of happiness. (AT 98). The Petitioner further testified that prior to the injury he was a happy and sappy man, but now he feels symptoms of depression even during what would be happy times. (AT 99).

The Petitioner testified that during the 18-month period after the accident, while he was working as a school resource officer, his symptoms never went away. (AT 104).

The Petitioner testified that at the time of trial, he still experiences PTSD episodes. The Petitioner further testified that these episodes are unpredictable and can be scenes where he is reliving the accident. (AT 106-107). The Petitioner testified that he has made progress and is hopeful for the future. (AT 108).

Testimony of Rodney Cox

Rodney Cox testified that he has been employed with the Respondent for 27 years. Mr. Cox testified that since 2015, he has been the Deputy Chief (DC). (AT 111). DC Cox testified that in 2016, his job duties consisted of overseeing civilians, school resource officers, and investigators. (AT 111).

DC Cox testified that he communicated with the Petitioner about once a week regarding upcoming training, and any issues that arose at the school. (AT 112). DC Cox testified that the Petitioner did not come forward to him immediately after the accident, or in the 18-month period after, about the symptoms he was experiencing (AT 114). DC Cox testified that he was made aware about the Petitioner's mental health issues during the investigation of removing the Petitioner from the school in September 2017. (AT 117).

On cross-examination, DC Cox testified that he believes the Petitioner to be a credible and hard-working person. (AT 119). DC Cox testified that this incident in 2016 was the first time an officer was killed in the line of duty in Jacksonville and South Jacksonville. (AT 119).

Testimony of Adam Mefford

Adam Mefford testified he is currently employed by the Respondent as Chief of Police (CP), and has been since March 26, 2017. (AT 128). CP Mefford testified that on March 4, 2016, he was employed by the Respondent as Lieutenant of Investigations. (AT 128).

CP Mefford testified that the protocol for reporting an injury is that the injury is to be reported immediately to the nearest supervisor. (AT 131). CP Mefford testified that prior to September 2017, the Petitioner had not mentioned any mental health issues he was having to him. (AT 132). CP Mefford testified that in September 2017, he received a call from the superintendent of the school requesting a meeting to discuss allegations against the Petitioner (AT 133).

CP Mefford testified that an investigation took place and it was determined that the Petitioner would be removed from the school resource officer position. (AT 135).

CP Mefford testified that during the investigation, texts were revealed and indicated that Petitioner was having mental health issues (AT 137). Mefford testified that he and the Petitioner had a discussion about his mental health at that time, and Mefford suggested Petitioner take time off in an effort to help his mental health. (AT 138-139).

CP Mefford testified that he called the police psychologist, Dr. Campion, about Petitioner's mental health issues. Dr. Campion referred Petitioner to Dr. Shapiro for further evaluation. (AT 140). CP Mefford testified that he would receive off work notes from Dr. Shapiro's office while Petitioner was treating there. (AT 143).

On cross-examination, CP Mefford testified that the Petitioner is a credible person. (AT 146). Mefford testified that the accident in question was a traumatic and tragic event involving police officers. (AT 146-147).

CP Mefford testified that the text messages he encountered were alarming enough to contact Dr. Campion. (AT 148). Mefford confirmed that while Petitioner was treating with Dr. Shapiro, he was not released back to work as a police officer. (AT 148).

Medical Treatment, Section 12 Exams, and Pension Disability Hearing

The Petitioner presented to Bradley Breneman LCSW (Licensed Clinical Social Worker) at Memorial Counseling Associates for sessions from January 16, 2017 to June 12, 2017. (PX 16)

The Petitioner presented to Dr. Larry Shapiro, Ph.D., at St. Louis Behavioral Health for an initial evaluation on September 14, 2017. Dr. Shapiro diagnosed the Petitioner with Post-Traumatic Stress Disorder (PTSD). Dr. Shapiro referred Petitioner to Dr. Sindhura Saini for psychiatric evaluation. (PX 6, p. 318-319).

On September 19, 2017, Dr. Saini noted a history of Petitioner being at the scene when another officer died in May 2016. He noted Petitioner complained of intrusive thoughts of horrific events Petitioner had in the past including seeing a neighbor's son hang himself and holding a kid's brains in his hands. Petitioner further reported that in the summers when not working as a school resource officer, he feels more vigilant. Dr. Saini diagnosed PTSD, and prescribed medication and psychotherapy. (PX 6, p. 297-298)

Petitioner continued to follow up with Dr. Shapiro and Dr. Saini, with ongoing complaints, but with signs of improvement over time with the treatment and medication. (PX 6).

Dr. Shapiro wrote a letter to Petitioner's prior attorney, John Boshardy, indicating Petitioner's diagnosis of PTSD. Dr. Shapiro noted there was no agreed upon timeline for the resolution of PTSD symptoms in the literature. Dr. Shapiro could not make a prediction as to if or when Petitioner may return to his job duties as a police officer. (PX 22, p. 1500)

On September 27, 2018, the Petitioner presented to Dr. Stephen Peterson, M.D., for a Section 12 examination requested by the Respondent. The Petitioner provided a history of the work accident and his symptoms. Dr. Peterson diagnosed the Petitioner with PTSD, an adjustment disorder with mixed disturbance of emotions and conduct. Dr. Peterson recommended the Petitioner undergo trauma focused cognitive processing therapy. Dr. Peterson found that the Petitioner's diagnoses were causally related to the accident of March 4, 2016 and opined that Petitioner could not return to work as a police officer. (PX 23).

On January 21, 2019, Dr. Shapiro wrote a letter to Petitioner indicating that he could engage in low stress part-time work, which would be beneficial to Petitioner's mental health. Dr. Shapiro wrote that Petitioner could not return to work in law enforcement. (PX 6, p. 121)

On October 8, 2020, the Jacksonville Police Pension Board found Petitioner to be entitled to a disability pension as a consequence of his PTSD related to the March 4, 2016 incident, which prevented Petitioner from performing the functions of a Police Officer. (PX 18, p. 1193)

On May 18, 2022, the Petitioner presented to Dr. David Fletcher, M.D., for a Section 12 examination requested by Petitioner's counsel. The Petitioner provided a history of the work accident and his symptoms. Dr. Fletcher diagnosed the Petitioner with PTSD and major depression. Dr. Fletcher opined that the traumatic event of March 4, 2016 was the triggering event for Petitioner's PTSD. Dr. Fletcher opined that Petitioner was nearing MMI, recommended a trial of Eye Movement Desensitization and Reprocessing (EMDR), opined that Petitioner was not disabled from all work, but was disabled from working as a police officer. (PX 3).

On March 30, 2023, the Petitioner presented to Dr. Lauren Marks, M.D., for a second Section 12 examination at the request of the Respondent. The Petitioner provided a history of the work accident and his symptoms. Dr.

Marks reviewed the medical records in this case. Dr. Marks found that the Petitioner had received reasonable and necessary medical treatment from his providers. Dr. Marks diagnosed the Petitioner with PTSD, found that he had reached MMI, and recommended that he continue to take his medications. Dr. Marks opined that the Petitioner's diagnosis of PTSD is a direct result of the traumatic event on March 4, 2016. (PX 2).

Dr. Philip Pan Testimony

Dr. Pan testified during an evidence deposition on August 6, 2021. Dr. Pan testified that he examined the Petitioner at the request of the Pension board. Dr. Pan testified that he reviewed the medical records provided to him and examined the Petitioner. Dr. Pan diagnosed the Petitioner with PTSD as a consequence of the triggering event at work in March 2016. (PX 9, p. 474).

Dr. Pan testified that with a diagnosis of PTSD, it is not unusual that symptoms develop gradually. In fact, Dr. Pan further testified that PTSD symptoms generally begin or get worse some time after the actual trauma. (PX 9, p. 30-31)

Dr. Pan testified that while Petitioner had other events occur after the March 2016 incident, those would be considered narcissistic injuries and would not lead to a PTSD diagnosis. (PX 9, p. 508). Dr. Pan testified that the Petitioner could not return to work as a police officer. (PX 9, p. 479).

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Dr. Jeckel testified that he performed a thorough investigation of Petitioner's "experiences throughout the trauma, his lifestyle...medications...family problems, marital problems. We try to cover everything of the person's experience" as well as a thorough psychiatric evaluation, making sure there is nothing for Petitioner to hide. (PX 7, p. 328). Dr. Jeckel testified that he diagnosed the Petitioner with PTSD which was directly related to the incident on March 4, 2016. (PX 7, p. 345-348).

Dr. Jeckel testified that all medical treatment and medications Petitioner had received were reasonable, necessary and related to his PTSD diagnosis. (PX 7, p. 349) Dr. Jeckel further testified that the Petitioner was not able to return to work as police officer at the time he signed a certificate stating the same for the pension board, but he could not predict if Petitioner may one day be able to return if he makes progress in his treatment. (PX 7, 350-351).

Dr. Jeckel testified that PTSD can take time to manifest, noting Iraq War veterans as an example, and described the experience of PTSD as a psychological shattering, and the recovery as a putting back together of the pieces. (PX 7, p. 356-357, 366-367).

Dr. David Fletcher Testimony

Dr. Fletcher testified during an evidence deposition on September 14, 2022. Dr. Fletcher testified consistent with his report, finding Petitioner's PTSD and major depression related to the March 2016 triggering incident. (PX 8, p. 400, 406). Dr. Fletcher testified that PTSD is usually "insidious and gradual" after a triggering event. (PX 7, p. 400).

Dr. Fletcher testified that the Petitioner could not return to work as a police officer but could return to gainful employment. (PX 8, p. 410). Dr. Fletcher further testified that the care and treatment the Petitioner has received for his PTSD diagnosis is reasonable, necessary and causally related to the incident of March 4, 2016, and again recommended Petitioner undergo a course of EMDR. (PX 8, p. 409-410).

CONCLUSIONS OF LAW

ISSUE (E): Was timely notice of the accident given to Respondent?

The threshold issue in this matter is notice. For a workplace accident to be compensable, an employee must provide notice to the employer. Proper notice should provide the place of accident and approximate date. Notice must be given as soon as is practicable, but no later than 45 days after the accident. A claimant is barred from making a claim based on lack of notice in cases in which no notice at all is given.

The Act further states that: “[n]o 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.” Moreover, the purpose of the notice requirement of the Act is to enable an employer to investigate the alleged accident. It has also been held by the Courts that the notice requirement is met when the employer possesses known facts related to the accident. *Tolbert v Illinois Workers Compensation Commission*, 11 N. E. 3d 453, (4th District 2014).

Typically, notice issues are liberally construed in the Petitioner’s favor so as not to be a trap for the uninformed employee who is not sure if a condition is work-related, or the employee who continues working with the hope that the injury will go away.

The facts show that the Respondent was well aware of the incident Petitioner experienced. CP Mefford confirmed that he was aware that multiple officers from his department responded to this fatal accident, including the Petitioner. Moreover, the Petitioner credibly testified that he was asked if he needed some time off immediately following the accident. (AT 34).

The Respondent has not been prejudiced, as they have had the chance to fully investigate the Petitioner’s claim.

The Respondent in this case had knowledge of the incident that all of the treating physicians and examining physicians agree was the triggering event of Petitioner’s PTSD. The Respondent acknowledged they were aware of this accident occurring on March 4, 2016. The Respondent acknowledged that the Petitioner was at the scene of the accident on March 4, 2016. The Respondent was able to investigate the accident thoroughly at the time, and later when Petitioner sought medical care related to the accident.

The Arbitrator finds that notice of the accident was given to Respondent.

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?

A “mental-mental” injury occurs when there is no physical trauma. The standard for compensability of a “mental-mental” claim is if the psychological injuries are caused by a sudden severe emotional shock traceable to a definite time, place and cause, even though no physical trauma or injury was sustained. *Pathfinder Co. v. Industrial Comm’n*, 62 Ill. 2d 556 (1976). Additionally, recovery for non-traumatically induced mental disease is limited to

those employees 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 non-employment conditions were the major contributing cause of the mental disorder. *Runion v. Industrial Commission*, 245 Ill.App.3d 470 (5th Dist. 1993).

On March 4, 2016, there was a catastrophic accident that resulted in the death of Officer Fitzgerald. The Petitioner's un rebutted and credible testimony establishes that he arrived at the scene while working as a police officer for the Respondent immediately after the fatal accident occurred. Petitioner saw officer Fitzgerald's dying body in the wreckage of the squad car. Moreover, Petitioner helped transport Officer Fitzgerald from the wreckage to the ambulance. The record reflects that Officer Fitzgerald's was the only police officer killed during Petitioner's time on the police force.

All of the treating doctors and examining physicians opined that Petitioner's PTSD is related to the incident of March 4, 2016.

The Petitioner has established that this situation was of a greater dimension of emotional strain for a police officer, that the conditions were objectively extreme, and that this incident was the major cause of his mental disorder.

The Arbitrator finds that the Petitioner has met his burden and proven that he sustained an accident that arose out of and in the course of the employment by the Respondent on March 4, 2016.

The Arbitrator also finds that the Petitioner has met his burden and his current condition of ill-being is causally related to his 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, all of the treating doctors and examining physicians opined that the medical expenses incurred by the Petitioner for treatment for his PTSD are related to the incident of March 4, 2016.

The Arbitrator finds the medical care Petitioner received related to this claim to be reasonable and necessary. Respondent shall pay the reasonable, necessary and related medical expenses contained in Petitioner's exhibit 10, 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.

The record reflects that Petitioner requires ongoing follow up psychiatric office visits, a course of EMDR, and medication related to his PTSD. Respondent shall provide and pay for this continuing reasonable and necessary medical care related to Petitioner's PTSD.

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

Incorporating the above, Respondent removed the Petitioner from his work duties on September 19, 2017. This is the time frame that the Respondent directed the Petitioner to seek care from Dr. Shapiro in Saint Louis.

From September 19th, 2017, through September 27, 2018 the Petitioner was under active medical care and instructed not to return to work by his treating physicians. On September 27, 2018 the Petitioner had an

examination with Dr. Peterson at Respondent's request. Dr. Peterson opined that due to the Petitioners PTSD, the Petitioner was unable to return to his police duties at that time.

On January 21, 2019, Dr. Shapiro wrote a letter to Petitioner indicating that he could engage in low stress part-time work, which would be beneficial to Petitioner's mental health. Dr. Shapiro wrote that Petitioner could not return to work in law enforcement. There is no evidence Petitioner sought part-time employment.

On May 10, 2019, the Petitioner was examined by Dr. Jeckel at Respondent's request. Dr. Jeckel opined that Petitioner could not return to work as a police officer and that further medical care in form of counseling would be beneficial.

On October 8, 2020, the Jacksonville Police Pension Board found Petitioner to be entitled to a disability pension as a consequence of his PTSD related to the March 4, 2016, incident which prevented Petitioner from performing the functions of a Police Officer. (PX 18, p. 1193)

On May 18, 2022, Petitioner underwent an examination with Dr. David Fletcher at his attorney's request. Dr. Fletcher opined that Petitioner was capable of returning to work with the restriction of not returning as a police officer or first responder. Petitioner offered no evidence that he has sought employment in any capacity since his duty disability award. The record reflects that Petitioner has voluntarily removed himself from the labor force.

Given this, the Respondent shall pay the Petitioner TTD benefits from September 19, 2017 through May 18 2022, or 243 and 1/7 weeks.

ISSUE (M): Should penalties or fees be imposed upon Respondent?

The Arbitrator finds that Respondent's dispute regarding the threshold issue of notice was not unreasonable or vexatious. The Arbitrator declines to award penalties.

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 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) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. Applying this, the Arbitrator finds as follows:

With regard to Sec. 8.1(b) (i): No impairment rating is contained in the record. The Arbitrator has considered this factor and lends it no weight.

With regard to Sec. 8.1(b) (ii): The Petitioner was employed by the Respondent as a police officer. The medical evidence demonstrates Petitioner cannot return to work as a police officer, but he is not prevented from returning to work in another capacity outside of a first responder role. Petitioner testified he has not made any attempt to return to work since being released to do so by his treating and examining physicians. The Arbitrator has considered and lends significant weight to this factor.

With regard to Sec. 8.1(b) (iii); Petitioner was 45 years old at the time of the injury. The Arbitrator has considered this factor and lends it some weight.

With regard to Sec. 8.1(b) (iv); Petitioner was granted his Pension disability benefits, and has not made an attempt to return to work in any capacity since being released to do by his treating and examining physicians. The Petitioner is highly educated, and during his testimony regarding the Warrior's Ascent group, it was clear that Petitioner has the requisite motivation and capacity to help others who have faced challenging mental circumstances. The Arbitrator has considered and lends this factor some weight.

With regard to Sec 8.1(b) (v); Petitioner was diagnosed with PTSD and depression as a direct result of the work injury. The Petitioner testified that at the time of trial, he is still taking Sertraline, Clonidine and Gabapentin daily for his chronic PTSD. (AT 68). The Petitioner testified that he still experiences night terrors. The Petitioner testified that at the time of trial, he still experiences PTSD episodes. The Petitioner testified that he has made progress and is hopeful for the future. All the medical evidence establishes that the Petitioner has medical restrictions that preclude him from performing police and first responder duties. This is a "loss of occupation" case, however, Petitioner's treating doctors and examining physicians noted that Petitioner should return to work in a capacity outside of a first responder role, as it would be beneficial to his mental health.

Given these factors, the Arbitrator finds that the Petitioner is entitled an award of 35% loss of use to his man as a whole.

Issue(s) (O): Loss of Occupation & Collateral Estoppel

The Arbitrator addressed the loss of occupation issue within the findings for the nature of extent of the injury, *supra*.

Turning to the issue of collateral estoppel, the IWCC is not bound by the ruling of the City of Jacksonville Police Pension Fund as a result of the collateral estoppel doctrine.

The minimum requirements for the application of collateral estoppel are: (1) The issue decided in the prior adjudication is identical to the one presented in the suit in question; (2) There was a final judgment on the merits in the prior adjudication; and (3) The party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication. *Demski v. Mundelein Police Pension Board, et al*, 358 Ill.App.3d 499 (2d Dist. 2005).

Petitioner filed a Petition for a Duty Disability Pension before the City of Jacksonville Police Pension Fund. The Pension Board issued a decision finding Petitioner is disabled based upon a post-traumatic disorder diagnosis as a result of an "act of duty." (PX 18, p. 1193)

In this case, Petitioner is alleging his post-traumatic stress disorder arose out of and in the course of his employment for Respondent. However, the Appellate Court has established an "act of duty" is not the same as whether an accident arose out of an in the course of employment. *Demski*, 358 Ill.App.3d at 502-503.

Also, this case involves a "mental-mental" injury. As stated herein above, a psychological injury is a compensable work injury if the claimant proves he or she suffered a sudden severe emotional shock traceable to a definite time, place and cause, even though no physical trauma or injury was sustained. *Pathfinder Co. v. Industrial Commission*, 62 Ill.2d 556 (1976).

In reliance upon *Demski*, and the standard set forth in *Pathfinder*, the Arbitrator finds the issues presented to the City of Jacksonville Police Pension Fund are not identical to those presented to the IWCC. Therefore, the doctrine of collateral estoppel does not apply, and the IWCC is not bound by the decision of the Pension Board.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC013620
Case Name	Michael Resendiz v. State of Illinois - Illinois Dept. of Military Affairs
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0462
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Lawrence Gordon
Respondent Attorney	Danielle Curtiss

DATE FILED: 11/17/2025

/s/Marc Parker, Commissioner

Signature

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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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL RESENDIZ,

Petitioner,

vs.

NO: 22 WC 013620

ILLINOIS DEPARTMENT OF
VETERAN AFFAIRS,

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, benefit rates, notice, causal connection, prospective medical treatment, temporary total disability, permanent partial disability, vocational services, and being advised of the facts and law, reverses the Decision of the Arbitrator and finds Petitioner sustained an accident that arose out of and in the course his employment, provided sufficient notice to Respondent, and proved causal connection. In so finding, the Commission awards medical and temporary total disability benefits, but denies vocational rehabilitation benefits. 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).

I. FINDINGS OF FACT

Petitioner, a 62-year maintenance employee, injured his lumbar spine on Friday, March 18, 2022, while moving a heavy pipe rack. Petitioner and his co-worker, Rob Stratton, were the only employees assigned to work at the Calumet Armory, which was in the process of being vacated. As

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part of that process, Petitioner and Stratton were tasked with moving all items out of the building. On the day of the injury, Petitioner was working alone and moving a heavy pipe onto a rolling cart when he felt an immediate sharp pain from his lower back into his lower extremities. Immediately following the injury, Petitioner texted his supervisor, Dan Faczek at 1:37pm, and his co-worker, Rob Stratton at 2:23 pm, reporting same.

Prior to the work injury, Petitioner presented to his primary care provider, Dr. Levy, on March 15, 2022 for shortness of breath and chronic knee pain. It was noted Petitioner had a history of sciatica; however, Petitioner did not specifically mention low back or lower right extremity pain during that appointment.

Following the work injury, Petitioner presented to Dr. Said for a previously scheduled appointment on March 21, 2022. At that appointment, Petitioner reported pain in his low back which radiated to the posterior and lateral aspect of his bilateral lower extremities, especially left. His physical exam showed tenderness to palpation over the spine, facet joints, and paraspinal muscles. Petitioner reported a history of lumbar and right extremity pain. An MRI was ordered.

Petitioner followed up with Dr. Said on April 4, 2022 with continued complaints of lower extremity and low back pain radiating into the posterior and lateral aspect of the lower extremity of the calf. Still awaiting an MRI.

Petitioner under an MRI of his lumbar spine on April 28, 2022 which showed grade I spondylolisthesis of L5/S1 and multilevel lumbar spondylosis with moderate to severe neuroforaminal narrowing at L2/3, L4/5, and L5/S1.

Petitioner returned to Dr. Said on May 2 and May 16, 2022. Petitioner reported a work injury on March 18, 2022, after moving a heavy pipe rack with severe pain in the back radiating into his lower extremity. Petitioner underwent a right L4/5 and L5/S1 TFESI.

Petitioner was referred to orthopedist, Dr. Mohan, on June 29, 2022 with complaints of low back and lower extremity pain after moving a 200 pound pipe rack onto a cart. Petitioner's primary pain was located on the right side of low back, radiating down the front and back of his right leg into the big toe of his right foot. Numbness and tingling were noted. Physical therapy was recommended.

Petitioner continued to follow up with Dr. Said, who performed a right L5/S1 ILESI on July 26, 2022, and a right L4/5 and L5/S1 TFESI on August 16, 2022, without sustained relief.

Petitioner followed up with Dr. Mohan on August 31, 2022 with onset weakness in his right lower extremity. On exam, Petitioner had a positive straight leg test and abnormal reflex findings. It was noted Petitioner had not attended physical therapy to date.

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Petitioner underwent a second lumbar MRI on September 1, 2022 which showed L5/S1 disc osteophyte complex and facet hypertrophy creating a severe right and moderate left foraminal stenosis plus disc bulge at L4/5 with severe right foraminal narrowing.

Petitioner underwent a Section 12 exam with Dr. Singh on September 26, 2022, where he reported lower back pain radiating into both legs after moving equipment at work weighing between 100 to 200 pounds. Petitioner reported all over pain in both legs/feet and denied back pain before the work accident. It was noted Petitioner had an unremarkable physical exam and positive Waddell signs, along with a normal neurological exam. Dr. Singh diagnosed Petitioner with a soft tissue muscular strain of the lumbar spine related to the work accident; and L5/S1 grade 1 isthmic spondylolisthesis without significant stenosis unrelated to the work accident. Dr. Singh opined four weeks of conservative treatment was reasonable and necessary, but Petitioner's ongoing treatment after that period was excessive and prolonged in nature. Finally, Petitioner required no additional treatment, was at MMI, and could return to work without restrictions.

Petitioner returned to Dr. Mohan on October 4, 2022, bringing Dr. Singh's IME report. It was noted Dr. Mohan disagreed with Dr. Singh, emphasizing how Dr. Singh's physical exam did not include physical strength tests. Regarding current symptoms, Petitioner reported the same symptoms, with the addition of weakness and drop in his right foot. Dr. Mohan recommended surgery and referred Petitioner for a second opinion.

Petitioner presented to Dr. Laich on October 20, 2022 for a second opinion. Petitioner reported low back and right greater than left lower extremity complaints since lifting a pipe rack on March 18, 2022. Dr. Laich reviewed previous medical records, lumbar MRIs, and performed a physical exam. Dr. Laich diagnosed Petitioner with chronic bilateral low back pain, spondylolisthesis of the lumbar region, spinal stenosis of lumbar region, and lumbar radiculopathy. Dr. Laich recommended continued medication and a spine program guided by PT and CT of the spine, with possible surgical disposition.

A CT of the lumbar spine on October 26, 2022, revealed a broad based right foraminal disc protrusion at L5/S1 measuring 5 mm and superimposed on diffuse uncovering of the posterior disc, creating a severe right and moderate left neural foraminal stenosis.

Petitioner presented to Dr. Serrone on November 15, 2022, for surgical evaluation. Dr. Serrone reviewed Dr. Mohan and Dr. Laich's records, along with lumbar MRIs and CT scans. Serrone noted positive physical exam findings. Based on Petitioner's ongoing symptoms for several months, including right DF weakness, Dr. Serrone recommended a right L5/S1 decompression and fusion, which Petitioner underwent on December 5, 2022.

Petitioner continued to follow up with Dr. Said post-operatively and report pain. Dr. Said recommended a repeat right L4/5 TFESI.

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Additional medical records and imaging were forwarded to Dr. Singh on March 15, 2023, and May 4, 2023 for review and comment. None of his original opinions changed.

Petitioner attended physical therapy from May 17, 2023, through September 13, 2023. At his final PT appointment, it was noted Petitioner may lack work abilities due to limited forward bending abilities.

Petitioner returned to Dr. Serrone on December 12, 2023, for a one year follow up. Petitioner reported continued RLE numbness/tingling in his L3 distribution, but other pain had resolved. Petitioner reported decreased stamina overall. Dr. Serrone recommended physical therapy and transferred Petitioner's care back to his primary care provider, Dr. Levy.

Petitioner continued to treat with Dr. Levy through the time of trial. At his final appointment on June 4, 2024, Petitioner reported gradual improvement with lumbar pain, with continued use of hydrocodone and tramadol. Petitioner continued to use a walking cane. It was noted Petitioner's neurological exam was normal, and he was diagnosed with lumbar disc disorder.

At trial, Respondent called Erika Raymond, Alberto Colon, Dan Faczek, and Rob Stratton to testify. Erika Raymond, human resource specialist, testified she received notification of Petitioner's work injury on May 4, 2022, and was told the workers compensation paperwork had been emailed to Petitioner on May 3, 2022. By May 11, 2022, Raymond had not received Petitioner's paperwork and asked Petitioner's current supervisor, Dan Faczek and former supervisor, Al Colon, to personally deliver the paperwork. Petitioner returned the employee notice of injury on May 12, 2022, and the remainder of the packet in June, 2022. Raymond testified she began her investigation of the work accident, including pictures and interviewing witnesses, on May 11, 2022, but was unable to perform a full investigation, including weighing the shelving unit, because the incident occurred back in March. She testified Petitioner continued to work after the incident until he left for vacation on May 16, 2022. Once he returned, Petitioner requested to go on TTD. To date, Petitioner had not returned to work and eventually retired. She testified Petitioner used his own benefit time and nonoccupational disability leave until his retirement.

Al Colon, Petitioner's former supervisor, testified he emailed a workers compensation packet to Petitioner on May 3, 2022, but did not receive his paperwork until May 11, 2022. Colon testified to certain insubordination issues with Petitioner that led to his temporary removal from Colon's supervision and placed under Dan Faczek's supervision. Colon testified employees, including Petitioner, would never be asked to move a 300-pound piece of equipment without assistance. Regarding work investigations, Colon testified an investigation was immediately launched once notification of an employee injury was received. He confirmed employees do notify their supervisors of injuries in person or over the phone via text message. With respect to reporting an injury to a fellow co-worker, Colon replied that would not be considered proper notice because it would not prompt an investigation. Colon confirmed he was not present and had no knowledge of Petitioner's work instructions on the day of the injury.

Rob Stratton, maintenance worker, testified he and Petitioner were co-workers and both assigned to Calumet Armory. He confirmed Petitioner texted him on March 18, 2022, that he was injured at work. He confirmed Petitioner had attempted to notify their supervisor, Dan Faczek of his injury. Stratton confirmed he was not working on the day of Petitioner's injury. He testified he and Petitioner would try to move large items as a team, but acknowledged they may attempt to lift an item individually not knowing it was heavy. He confirmed he forwarded Dan Faczek's cell phone number to Petitioner on the date of the injury. He confirmed employees do notify their supervisors of injuries through their cell phones. He confirmed it was common for he and Petitioner to move items for the state maintenance team to pick up. He testified it was he and Petitioner's responsibility to clean out the entire armory, however, there was no direct mandate to clean out certain rooms at certain times. Stratton could not recall being questioned about Petitioner's injury.

Dan Faczek, Military Facility Officer I, testified he was Petitioner's supervisor at the time of the injury. Faczek testified Petitioner reported the March 18, 2022 injury to him on May 3, 2022. Following Petitioner's report, Faczek notified Erika Raymond and asked Albert Colon to email Petitioner the requisite paperwork. Faczek also told Petitioner to notify Tristar. On May 11, 2022, Faczek personally delivered the workers compensation paperwork to Petitioner. Faczek could not recall receiving a text message from Petitioner about the injury and if he had been notified of the injury, he would have notified Erika Raymond. Faczek testified he would never direct his employees to lift 300 pounds without aid. Faczek agreed employees communicated with him via cell phone and confirmed his phone number was the same as it was on March 18, 2022. He did not recall receiving text messages about the work injury or any pictures of what had occurred.

In addition to the above witnesses, the parties also presented the medical opinions of Dr. Mohan and Dr. Singh. Dr. Mohan testified on behalf of Petitioner. Dr. Mohan diagnosed Petitioner with Petitioner with pre-existing spondylolisthesis and new disc herniation at L5/S1 related to the work accident. More specifically, Petitioner had a weakened portion of his spine from a congenital L5 pars defect, which could have easily been aggravated by a lifting incident as described by Petitioner. In support of his opinion, Mohan testified Petitioner had minimal lumbar pain and treatment before the work accident, and following the work accident, he had low back and radicular pain and symptoms caused from the disc herniation at L5/S1 impinging on the L5 nerve. Unlike Dr. Singh, Dr. Mohan noted objective findings on Petitioner's MRI/CT scans and exam that correlated with his right sided radicular symptoms. In addition to the objective findings, Petitioner had worsening complaints of pain and weakness in his right extremity, to the extent Dr. Mohan referred Petitioner out to Dr. Serrone, who accepted his insurance and could provide faster treatment. Following surgery, Mohan testified Petitioner's condition improved. He opined all treatment had been reasonable and necessary. Mohan testified Dr. Serrone's operative report confirmed severe stenosis from the disc herniation at L5/S1.

Respondent presented the opinion of Dr. Singh. Dr. Singh did not believe Petitioner's ongoing condition was causally related to the work accident. Dr. Singh diagnosed Petitioner with a lumbar strain related to the work accident and pre-existing lumbar spondylolisthesis. He testified Petitioner had a normal neurological exam, displayed signs of symptom magnification, including

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self-limiting range of motion, cogwheeling, and facial grimacing; had a history of lumbar strains; had no evidence of nerve root compression on MRI; and had no positive physical exam findings indicating nerve root compression. He opined 4 weeks of conservative treatment was reasonable and necessary but did not believe Petitioner was a candidate for surgery, regardless of causation. Following his IME, Dr. Singh was forwarded several years of medical records for review, but his opinions did not change. Dr. Singh agreed moving a large piece of equipment may cause a lifting injury. Dr. Singh opined it would take approximately 6 to 9 months following a lumbar fusion to reach MMI.

The Arbitrator found Petitioner failed to show he sustained an accident that arose out of and in the course of his employment, failed to provide sufficient notice, and failed to show his current condition was causally related to the work accident. All benefits were denied.

II. CONCLUSIONS OF LAW

1. Accident

For an accident to arise out of employment, there needs to be a causal connection between the employment and the accidental injury, in that the injury must originate in a risk that is connected with or incidental to the employment. *Union Starch v. Industrial Comm'n*, 56 Ill. 2d 272, 307 N.E.2d 118 (1974).

The Commission views the evidence differently than the Arbitrator and finds Petitioner sustained an accident that arose out of and in the course of his employment. Petitioner consistently reported an injury to his low back and lower extremities after moving a heavy pipe at work on March 18, 2022. There was no dispute Petitioner was performing his assigned job duties at the time of the accident and was working alone on that day. There was no dispute Petitioner texted his co-worker, Rob Stratton, on March 18, 2022, he had injured his back while moving items at work. There was no dispute Petitioner reported to Rob Stratton he had notified their supervisor, Dan Faczek, of his injury. Petitioner both testified and admitted the text messages, identified as PXO, he forwarded to Dan Faczek on March 18, 2022, which also included pictures. At trial, Dan Faczek did not deny receiving the text messages, instead testifying “he could not recall.”

Petitioner admitted medical records of his treatment three days before the work accident, March 15, 2022, and three days following the work accident, March 21, 2022, which shows an onset of new low back and lower extremity radicular pain after the work accident.

The Commission finds the undisputed evidence admitted at trial coupled with Petitioner’s testimony he notified his supervisor directly after the work accident and the corresponding text messages, sufficient to prove he sustained an accident that arose out of and in the course of his employment.

2. Notice

The Illinois Workers' Compensation Act does not require notice to be perfect for the employee to proceed with an action. Where imperfect notice is given, the defect or inaccuracy must create prejudice against the employer. If not, the situation will proceed as usual, regardless of defect or inaccuracy of notice. 820 ILCS 305/6(c). The legislature has mandated a liberal construction of the notice requirement. *Tolbert v. Workers' Comp. Comm'n*, 2014 IL (4th) 130523WC, 11 N.E.3d 453.

In *Gano Elec. Contracting v. Industrial Comm'n*, an employee was attempting to move a 100-pound transformer when he injured his shoulder. No one witnessed the injury, but Petitioner immediately reported it to his foreman. The foreman testified he did not recall the report and did not report the incident to others because there was no immediate medical attention necessary. In addition to reporting the incident to his superior, the employee also told his co-worker shortly after the work accident. The employer testified they received no notice of the incident until the employee filed his claim after the 45-day deadline. In their findings, the court wrote a claim would only be barred when no notice was given; if the notice was defective or inaccurate, the employer must show how they had been prejudiced by the defective notice. The *Gano* court found Petitioner's notice was sufficient; Petitioner reported the incident to his superior and it was not his fault his superior did not report the injury to the employer at the time of occurrence. *Gano Elec. Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 631 N.E.2d 724 (4th Dist. 1994).

Similar to *Gano*, Petitioner in the present case was working alone on the day of the accident. Following the accident, Petitioner immediately texted his supervisor and his co-worker he had injured his back at work. Rob Stratton confirmed receipt of Petitioner's text message and verified Petitioner was attempting to notify their supervisor, Dan Faczek. Additionally, Petitioner introduced into evidence copies of the text messages he forwarded to Dan Faczek on the day of the injury, and copies of the text messages with Rob Stratton, confirming he had the correct phone number for Faczek. At trial, Dan Faczek could not recall if he received a text message from Petitioner on that day. We find Petitioner provided sufficient notice.

3. Causation

A claimant in a workers' compensation action has the burden of proving, by a preponderance of the evidence, some causal relationship between her employment and her injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989). Whether a causal relationship exists between a claimant's employment and her injury is a question of fact to be resolved by the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954, 78 Ill. Dec. 120 (1984). "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." (Emphasis in original.) *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003).

The Commission views the evidence differently and finds Petitioner's current condition was causally related to the work accident. Prior to the work accident, Petitioner had intermittent reports of lumbar pain and minimal treatment, however, prior treatment did not include imaging, injections, or surgery. Following the accident, Petitioner felt immediate low back pain and reported it to his supervisor and co-workers. Three days after the work accident, Petitioner attended a pre-scheduled medical appointment and reported onset of new low back and lower extremity pain. Given his radicular pain, his provider ordered an MRI and referred Petitioner to Dr. Mohan, who diagnosed Petitioner with L5/S1 spondylolisthesis and a new disc herniation at L5/S1. Petitioner continued to treat with Dr. Mohan for ongoing right sided radicular symptoms, which continued to worsen and develop into weakness and foot drop. Given Petitioner's worsening symptoms, Dr. Mohan referred him to Dr. Laich and Dr. Serrone for second opinions and to accelerate Petitioner's treatment. Both providers agreed surgeries should be considered based on Petitioner's MRI, physical exam, and neurological deficits. Specifically, Petitioner had decreased right L5/S1 distribution sensations, right foot drop, and severe right sided foraminal stenosis, which was corroborated by the operative report. Dr. Mohan opined the work accident aggravated Petitioner's underlying spondylolisthesis and caused a new disc herniation, resulting in radicular symptoms, neurological deficits, and the need for treatment. We agree.

Conversely, we are not persuaded by Dr. Singh's opinions. Dr. Singh was the only provider to indicate symptom magnification, record a normal physical examination, and find no severe stenosis on MRI or CT. Dr. Singh failed to consider Petitioner's lack of neurological symptoms before the work accident and ongoing symptoms following the work accident. Dr. Singh's opinion Petitioner had no physical exam findings supporting surgical treatment was not supported by the medical evidence, which showed Petitioner had weakness and numbness in the right foot correlating with the L5/S1 dermatome; severe right and moderate left foraminal stenosis at L5/S1 on CT; decreased flexion and extension; right foot drop; and positive straight leg raises on the right with significant weakness of the plantar flexion.

Accordingly, we agree with Dr. Mohan and find Petitioner's condition related to the work accident.

4. Wages

At trial, the parties agreed Petitioner's total wages for the year preceding the work accident was \$60,004.00 but disputed the average weekly wage calculation. Based on the parties agreed yearly wages, the Commission finds the correct average weekly wage calculation is \$1,153.94.

5. Medical Expenses/TTD/Prospective Medical

Based on the above findings, the Commission awards all reasonable, necessary, and causally related medical expenses outlined in PXD, PXE, PXF, PXT, PXH, and PXI, as provided in Section 8(a) and 8.2 of the Act.

Petitioner is seeking temporary total disability from October 3, 2022 through October 22, 2024. The evidence shows Petitioner was taken off work by Dr. Mohan in June 2022 and never returned to work. He is now retired. Petitioner testified he was under restrictions from his primary care provider, Dr. Levy, at the time of trial, however, there are no work restrictions noted in Dr. Levy's records. Moreover, neither Dr. Serrone, Dr. Mohan, or any other treating provider addressed ongoing restrictions. In his deposition, Dr. Singh testified Petitioner would be able to return to work approximately six months after his surgery, or June 5, 2023, and would be at MMI approximately nine months after his surgery, or September 5, 2023. Since there are no restrictions in the medical records or testimony, the Commission awards TTD from October 3, 2022, through June 5, 2023, or six months after the date of surgery per the unrebutted opinions of Dr. Singh.

Regarding prospective medical, the Commission awards ongoing physical therapy as recommended by Dr. Levy.

6. 8j Credit

Section 8(j) provides in pertinent part (820 ILCS 305/8(j)):

In the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act. This paragraph does not apply to payments made under any group plan which would have been payable irrespective of an accidental injury under this Act. Any employer receiving such credit shall keep such employee safe and harmless from any and all claims or liabilities that may be made against him by reason of having received such payments only to the extent of such credit.

The Commission has previously interpreted the above section to establish three requirements before credit can be awarded under § 8(j). First, group insurance must have paid medical benefits; second, the employer paid into the group policy; and third, the group policy must preclude medical payments for injuries sustained in work-related accidents. *Yarmer v. City of Chicago*, 19 IWCC 333.

Here, we find Respondent has failed to establish the above requirements and is not entitled to an § 8(j) credit. Specifically, Respondent failed to show they pay into a group policy and that the group policy precludes medical payments for injuries sustained in work-related accidents.

7. Vocational Rehabilitation

When an employee is seeking an award that includes vocational rehabilitation, the burden of proof falls on the employee and they must present evidence to show they are entitled to vocational rehabilitation *Drovesky v. Mutual Wheel Co.*, 2000 Ill. Wrk. Comp. LEXIS 138, 00 I.I.C. 0488 (2000). The employee must also prove that vocational rehabilitation is necessary in his or her situation. *Weiss v. Park-Mark, Inc.*, 1999 Ill. Wrk. Comp. LEXIS 671, 99 I.I.C. 0258 (1999). Vocational rehabilitation is neither mandatory for the employer nor appropriate if the injured employee does not intend, although capable, to return to work. *Euclid Beverage v. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090 WC.

In this case at hand, Petitioner presented no evidence of permanent restrictions. There was no vocational evaluation or testimony admitted at trial. Petitioner testified he retired from employment with Respondent, but there was no testimony Petitioner intended to return to work in some capacity, his capabilities to return to work, or whether vocational rehabilitation would increase his earning capacity. Accordingly, the Commission finds Petitioner has failed to show he is entitled to vocational rehabilitation.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed January 21, 2025, is hereby reversed for the reasons stated above.

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 Petitioner's average weekly wage calculation is \$1,153.94, as provided in Section 10 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical services, as outlined in PXD, PXE, PXF, PXT, PXH, and PXI, and provided in Section 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 \$769.29/week for 35 1/7 weeks, commencing October 3, 2022 through June 5, 2023, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION Respondent shall pay for ongoing physical therapy as recommended by Dr. Levy, as provided in Section 8(a) of the Act.

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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.

November 17, 2025

o: 9/25/25

MP/ns

068

/s/ Marc Parker
Marc Parker

/s/ Maria E. Portela
Maria E. Portela

/s/ Christopher A. Harris
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC024332
Case Name	Aaron Watkins v. City of Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0463
Number of Pages of Decision	16
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 11/17/2025

/s/Marc Parker, Commissioner

Signature

When Petitioner awoke from his October 5, 2020 hip surgery, he complained of left eye pain. Small pieces of glass, from the windshield which he had struck, were found in his eye. They were removed and his eye was flushed. Petitioner was diagnosed with a left eye corneal abrasion. That condition improved, and at the time of his discharge from St. Francis on October 16, 2020, was reported to have been “resolved.”

On June 9, 2021, Petitioner was released from care and returned to his prior job without restrictions, and has not missed any work since returning. He continues to work as a detective and is able to perform all his duties, including running, climbing over fences, and using force to detain suspects. Petitioner has not seen any doctors for his injuries since May 2021.

The Arbitrator awarded Petitioner seven (7) separate PPD awards for his injuries: 35% loss of the right leg; 25% loss of the right thumb; 7.5% loss of the right middle finger; 7.5% loss of the left eye; 7.5% loss of the body as a whole; 10% loss of the right hand, and 10 weeks disfigurement of the head and face. On Review, Petitioner asks the Commission to vacate or reduce each of those awards except the disfigurement award. Respondent argues, inter alia, that the Arbitrator’s awards of 35% right thumb and 10% right hand were duplicative for Petitioner’s right thumb injury, and were prohibited by Section 8(e) of the Act. Respondent also argues that the awards of 35% loss of the right leg and 7.5% loss of the body as a whole under §8(d)2 were also duplicative and for Petitioner’s right hip injury. Respondent seeks reduction of the 7.5% loss of the left eye award, claiming it to be excessive for the injury sustained: a corneal abrasion which had resolved.

CONCLUSIONS OF LAW:

With regard to the Arbitrator’s awards of 10 weeks disfigurement, 7.5% loss of right middle finger, 25% loss of right thumb, and 35% loss of the right leg, the Commission affirms and adopts the Arbitrator’s awards, for the reasons stated in the Arbitrator’s Decision.

10% Right Hand Award:

The Commission supplements the Arbitrator’s findings regarding subsection (v) of §8.1b(b) – Evidence of disability corroborated by the treating medical records – with the following:

We find that Petitioner sustained injuries to his right hand in addition to injuries which he sustained to his right middle finger and right thumb. On December 23, 2020, Dr. Baber reported Petitioner was having issues with his right hand. Petitioner was required to wear a right wrist and hand splint. When he underwent surgery to his thumb on January 19, 2021, he required a tendon graft which was harvested from his right wrist. Petitioner testified that this surgery left scars not only on his hand from the base of his thumb to the web of his hand, but also on his right wrist. At arbitration, Petitioner testified he experienced burning in his hand since his thumb surgery. The physical therapy he attended was not just for his thumb and fingers, but also involved his hand. On March 9, 2021, Petitioner’s physical therapist documented Petitioner’s difficulty with gripping

and holding objects with his right hand. On April 20, 2021, the therapist noted Petitioner was only able to perform various right hand grips at 75% of what he could perform with his left hand.

We find the facts of this case distinguishable from those in *Meade v. Industrial Commission*, 48 Ill.2d 215 (1971), upon which Respondent relies. In *Meade*, the courts affirmed the Commission's decision to deny an award for loss of the hand where the evidence failed to show any loss of use of the employee's hand other than the disability due to the injured fingers, and there was no injury to the palm or thumb. In the present case, Petitioner did suffer an injury to his right hand, in addition to his thumb and middle finger.

For these reasons, the Commission finds the Arbitrator's award of 10% loss of the right hand was not a duplicative award for Petitioner's right thumb and middle finger injuries. We therefore affirm the Arbitrator's award of 10% loss of use of the right hand.

7.5% body as a whole (§8(d)2) award:

Section 8(e) provides that when an award under that section has been made for a specific loss, then no compensation shall be made under any other provisions of the Act. Also, awards under §8(d)2 are proper only where the Petitioner has sustained serious and permanent injuries not covered by §8(c) or §8(e) of the Act. *Village of Deerfield v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 131202WC.

We note that the Arbitration Decision did not expressly state whether the 7.5% body as a whole award under §8(d)2 was for Petitioner's right hip injury, or, for another injury not covered by §8(c) or §8(e) of the Act. We have reviewed the record to see whether Petitioner has proved he sustained any injuries other than to his right hip which would support an award under §8(d)2. We conclude that Petitioner has not.

Petitioner acknowledged that he was never diagnosed with any brain, neck, or back injury. He admitted he did not lose consciousness after his accident. At the hospital, all of his CT scans – cervical spine, head, and face – were negative. He was never diagnosed or treated for any cervical or lumbar spine injuries. Petitioner agreed that he had never been diagnosed with a concussion from his accident. He admitted he never experienced any issues with dizziness, balance, memory, confusion, or sensitivity to sound or light.

Because we find that the award of 35% loss of Petitioner's right leg was appropriate for his right hip injury, an award under §8(d)2 for that same injury would be duplicative and would result in a double recovery to the Petitioner. Accordingly, as Petitioner failed to prove he sustained any other injuries which would support an award under §8(d)2, we vacate the award of 7.5% loss of the body as a whole.

7.5% left eye award:

Three days after Petitioner's accident, he complained of left eye pain. Small pieces of glass were removed from his eye at that time, and his eye was flushed. That injury was diagnosed as a corneal abrasion. Three days later, Petitioner reported his eye pain had improved, and records noted Petitioner had only minimal conjunctival injection, and that no foreign bodies were seen. At Petitioner's discharge from the hospital on October 16, 2020, his records stated, "Left corneal abrasion (resolved)."

Petitioner had a follow-up eye examination on 12/10/20. He testified that his eye doctor at that exam informed him that both of his eyes were normal.

We find that the award of 7.5% loss of the left eye was excessive for his injury, a resolved corneal abrasion which caused no loss of vision. We therefore reduce that award to 2% loss of the left eye.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 15, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of \$871.73/week for 10 weeks, because the injuries sustained caused the disfigurement of Petitioner's head and face, as provided in §8(c) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$871.73/week for a further period of 75.25 weeks, as provided in §8(e)12 of the Act, because the injuries sustained to his right hip caused Petitioner a 35% loss of use of his right leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$871.73/week for a further period of 19 weeks, as provided in §8(e)1 of the Act, because the injuries sustained caused Petitioner a 25% loss of use of his right thumb.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$871.73/week for a further period of 2.85 weeks, as provided in §8(e)3 of the Act, because the injuries sustained caused Petitioner a 7.5% loss of use of his right middle finger.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$871.73/week for a further period of 20.5 weeks, as provided in §8(e)9 of the Act, because the injuries sustained caused Petitioner a 10% loss of use of his right hand.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$871.73/week for a further period of 3.24 weeks, as provided in §8(e)13 of the Act, because the injuries sustained caused Petitioner a 2% loss of use of his left eye.

IT IS FURTHER ORDERED BY THE COMMISSION that the §8(d)2 award of 7.5% body as a whole, is vacated.

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

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

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

November 17, 2025

MP/mcp
o-11/06/25
068

/s/ *Marc Parker*

Marc Parker

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Christopher A. Harris*

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC024332
Case Name	Aaron Watkins v. City of Peoria
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 8/15/2024

/s/ Maureen Pulia, Arbitrator
Signature

INTEREST RATE WEEK OF AUGUST 13 2024 4.795%

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

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION
 NATURE AND EXTENT ONLY**

AARON WATKINS,
 Employee/Petitioner

Case # **20** WC **24332**

v.

Consolidated cases: _____

CITY OF PEORIA,
 Employer/Respondent

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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/24/24**. By stipulation, the parties agree:

On the date of accident, **10/2/20**, 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 **\$92,763.11**, and the average weekly wage was **\$1,783.91**.

At the time of injury, Petitioner was **45** years of age, **married** with **1** dependent children.

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

Respondent shall be given a credit of **\$00,00** for TTD, **\$00,00** for TPD, **\$00,00** for maintenance, and **\$00,00** for other benefits, for a total credit of **\$00,00**.

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 the sum of **\$871.73/week** for a further period of **75.25** weeks, as provided in Section **8(e)12** of the Act, because the injuries sustained caused **petitioner a 35% loss of use of his right leg.**

Respondent shall pay Petitioner the sum of **\$871.73/week** for a further period of **19** weeks, as provided in Section **8(e)1** of the Act, because the injuries sustained caused **the petitioner a 25% loss of use of his right thumb.**

Respondent shall pay Petitioner the sum of **\$871.73/week** for a further period of **2.85** weeks, as provided in Section **8(e)3** of the Act, because the injuries sustained caused **petitioner a 7.5% loss of use of his right middle finger.**

Respondent shall pay Petitioner the sum of **\$871.73/week** for a further period of **12.15** weeks, as provided in Section **8(e)13** of the Act, because the injuries sustained caused **petitioner a 7.5% loss of use of his left eye.**

Respondent shall pay Petitioner the sum of **\$871.73/week** for a further period of **37.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **petitioner a 7.5% loss of use of his person as a whole.**

Respondent shall pay Petitioner the sum of **\$871.73/week** for a further period of **20.5** weeks, as provided in Section **8(e)9** of the Act, because the injuries sustained caused **petitioner a 10% loss of use of his right hand.**

Respondent shall pay Petitioner permanent partial disability benefits of **\$871.73/week** for **10** weeks, because the injuries sustained caused the disfigurement of the **petitioner's head and face**, as provided in Section 8(c) of the Act.

Respondent shall pay Petitioner compensation that has accrued from **10/2/20** through **7/24/24**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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 15, 2024

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 45 year Police Officer, sustained an accidental injury to various body parts that arose out of and in the course of his employment by respondent on 10/2/20. Petitioner began working as a police officer for respondent in 2004. Since then, he has worked in Problem Oriented Policing, as a Violent Crimes Detective, and in Special Investigations. On the date of injury, petitioner was working in Special Investigations. His duties at that time included vice, narcotics, gangs, guns and regular police work. His days revolved around coordinating the duties of the day between the units.

Prior to 10/2/20 petitioner sustained injuries to his back and left leg while working for respondent in 2015. He completed treatment for these injuries in 2015 and returned to full duty work. Petitioner denied any injuries to his right hip, right thumb, or right hand prior to 10/2/20.

On 10/2/20 petitioner testified that he was traveling in his unmarked pickup truck collecting evidence from the night before. As he was driving down Jefferson, he noticed two individuals talking at an autobody shop. One of these individuals was known to him, but the other was not. Petitioner tried to get the plate of the vehicle of the individual he did not know. Petitioner continued driving and at the intersection ran the red light, and collided with a semi truck, between the cab and where the trailer starts. Petitioner's truck sustained significant damage, and his head struck the windshield.

Immediately following the accident, the driver of the semi truck came to assist him, but was unable to open the driver's door. Petitioner was pinned in the front seat of the vehicle, and began to panic thinking he would not be able to get out of the truck. Petitioner then attempted to pull himself into the back seat so that he could get out. When he tried to do this, he noticed that he was unable to use his right hip or right thumb. The semi truck driver called 9-1-1. Petitioner was transported via ambulance to the OSF St. Francis Medical Center. He was admitted to Level 1 trauma in the emergency room.

At OSF St. Francis Medical Center petitioner came under the care of Dr. Derek Minor. Petitioner was unable to see because he had windshield glass in his eyes. Attempts were made to flush out the glass in his eyes. Petitioner had lacerations and abrasion to his forehead and face from hitting the windshield, as well as a left black eye. Petitioner also complained right leg, right hip, and facial pain. X-rays were taken of petitioner's chest, right hand, right hip, right knee and pelvis. The x-rays revealed a non-displaced avulsion fracture of the base of the third proximal phalanx of the right hand, and dislocation of the right hip with an acetabular fracture. CTs of petitioner's abdomen/pelvis, cervical spine, facial bones, and head were also taken. The results confirmed a right hip fracture.

Petitioner testified that he sustained a displaced fracture of the proximal phalanx of the right middle finger, right hand pain, abrasion of the left eye, loose bone chips/fragments in his right hip, cuts to his forehead, and right knee pain.

Petitioner underwent a consult with an orthopedic surgeon who assessed a right hip dislocation with an acetabular fracture. Immediate surgery was recommended, and performed by Dr. Keith Corpus. Dr. Corpus performed a closed reduction of petitioner's right hip with placement of a traction pin, and an open reduction and internal fixation of his right acetabulum. Dr. Corpus then ordered a repeat CT scan of petitioner's pelvis to evaluate petitioner for bone fragments within the acetabulum. Dr. Corpus then transferred petitioner's care to Dr. Negem for definitive pelvis fixation. Petitioner was placed in traction pending the next surgery.

On 10/5/20 Dr. Negem performed an open reduction and internal fixation of the right posterior wall acetabulum fracture, removal of loose bodies in the right hip, and removal of the previously placed traction pin. Post-operatively, Dr. Negem ordered physical therapy. Petitioner testified that he still has the hardware in his body.

On 10/16/20 petitioner was discharged from OSF St. Francis Medical Center due to COVID protocols. He was transferred home and Iris Home Health provided physical and occupational therapy, and provided petitioner with the necessary medical equipment. Petitioner was provided with a hospital bed and was unable to walk. Petitioner underwent treatment in his home, provided by Iris Home Health through 1/11/21. While treating at home, petitioner still had follow-up appointments outside the home.

On 10/20/20 petitioner followed up with Dr. Negem at OSF Orthopedics. At that time, petitioner presented ambulating with a walker, and putting near full weight bearing on his right lower extremity. Petitioner was doing pretty well. He reported that his hip was essentially pain-free since the surgery.

On 10/26/20 petitioner presented to Dr. Vander Naalt at OSF Orthopedics for his right hand. X-rays of the petitioner's right hand and fingers were taken. The x-rays showed that petitioner had an ulnar collateral ligament rupture to his right thumb. Also noted was a nondisplaced fracture of the proximal phalanx of the right middle finger. The right middle finger was splinted, and surgical intervention was recommended. This surgery was initially denied by workers' compensation carrier.

On 11/12/20 petitioner presented to Dr. Moody at OSF Occupational Health. Petitioner reported no issues with his memory, confusion, or mental foggiess. Petitioner reported that he did not lose consciousness as a result of the accident. Petitioner denied any problems with dizziness or balance. Petitioner did not demonstrate any light or sound sensitivity, and was not diagnosed with a concussion at any time after the accident.

On 11/17/20 petitioner returned to Dr. Negem. Petitioner reported that his hip pain had gotten significantly better over the past few weeks, but he still had some minor groin pain. He reported that he was not

taking any pain medicine. X-rays were taken of the right hip that revealed maintained alignment of the hip with no evidence of progression to osteoarthritis or avascular necroses of the femoral head. On 12/1/20 petitioner reported to Dr. Negem that he had no pain with 50% weight bearing. Dr. Negem recommended that petitioner work toward full weight bearing in the next 2 weeks. Dr. Negem ordered x-rays of the pelvis and a course of physical therapy. The x-rays of the pelvis showed petitioner was healing well.

On 12/10/20 petitioner presented to Dr. Tina Thomas at Illinois Eye Center. Petitioner gave a history of the accident and reported that he had glass surrounding the tissue of his eye. An examination revealed normal optic discs and retinas. Petitioner was diagnosed with farsightedness.

On 1/5/21 petitioner returned to Dr. Negem. Dr. Negem noted that petitioner was doing exceptionally well and had begun weight-bearing as tolerated, without any assistive devices around the house. Dr. Negem ordered additional physical therapy. Dr. Negem released petitioner to light duty work.

On 1/5/21 petitioner also presented to Dr. Moody. He reported that he was not taking any pain medication at that time.

On 1/19/21 petitioner finally underwent the surgery that was initially recommended by Dr. Vander Naalt on 10/26/21. Petitioner underwent a right thumb ulnar collateral ligament reconstruction with free tendon graft performed by Dr. Vander Naalt. Due to the delay in the surgery, significant scar tissue was removed to allow the native ligament to be visualized. FiberWire sutures were placed within the ligament with locking stitches. A strip of palmaris longus needed to be harvested to allow for a ligament suture tape reconstruction.

On 2/1/21 petitioner followed up post-operatively with Dr. Vander Naalt and reported that he had no numbness or tingling in the right hand. Petitioner was fitted with a custom splint to wear for the next 5 weeks. Petitioner testified that he had scarring under his right wrist, and at the base of his thumb that goes down into the web of his right hand.

On 2/1/21 petitioner also saw Dr. Moody. Petitioner reported that he was able to walk normally.

On 2/16/21 petitioner followed-up with Dr. Negem. Repeat pelvic x-rays were taken. Petitioner was ambulating without any assistive devices with minimal amount of pain. Petitioner did report occasional groin pain with increased activity.

On 3/8/21 petitioner returned to Dr. Vander Naalt. Petitioner reported some burning pain and shooting pain to the right thumb that extended proximally, and some stiffness at the IP joint due to wearing his splint. He felt his range of motion was not too bad. Dr. Vander Naalt recommended petitioner start weaning off his splint. He also ordered some physical therapy. Petitioner was continued off work.

On 4/5/21 petitioner followed up with Dr. Vander Naalt. He reported some burning pain at his ulnar and radial aspects of his right thumb, and some right hand weakness. Petitioner reported that his right hip pain was well controlled, and he was working on his gait in therapy. He noted increased aching in the hip in the colder weather. A repeat x-ray of the pelvis revealed maintained alignment and good joint space of the right acetabulum with no evidence of subluxation dislocation of the right hip. Petitioner was released to light duty.

On 4/6/21 petitioner followed-up with Dr. Moody. He reported full range of motion with his right thumb, with occasional burning in his thumb, but no real pain at that time.

On or about 4/12/21 petitioner returned to work in a light duty position.

On 5/3/21 petitioner returned to Dr. Vander Naalt and reported improved strength in the right hand with occasional nerve shocks to the right thumb. He reported feeling ready to return to regular duty work for his thumb. Dr. Vander Naalt released petitioner to regular duty as it relates to his right thumb. Dr. Negem released petitioner for his hip. Petitioner was released on an as needed basis. Despite his release to full duty work, petitioner continued in physical therapy through May 2021.

On 5/6/21 petitioner returned to Dr. Moody. Dr. Moody ordered a work capacity evaluation. On 6/8/21 petitioner underwent a work capacity assessment, performed by Sean McGinn at OSF Industrial Rehabilitation. Petitioner demonstrated functional range of motion and strength across all joints in all planes of motion. He also demonstrated normal grip and pinch strength, as well as hand coordination, bilaterally. Petitioner demonstrated material handling abilities in the heavy physical demand level. Petitioner was found to have met all the requirements to return to his previous position without restrictions.

On 6/9/21 Dr. Moody released petitioner to full duty work without restrictions. He also released petitioner from his care.

After being released from care, petitioner testified that he noticed his right hip some time catches and his right leg will not move. As a result, petitioner testified that he has fallen three or four times since the accident, because of his right hip getting caught. Petitioner further testified that his burning sensation in his hand dissipated with therapy over time.

Petitioner testified that since being released to full duty work on 6/9/21 he has not missed any work as a result of his injuries. Petitioner is still a detective with respondent and participates in surveillance and intelligence work. Petitioner is currently working with no restrictions, and has not sought any further treatment for his injuries since 6/9/21. Petitioner testified that did not lose any income as a result of his injuries.

Petitioner testified that his job as a patrol officer and a detective include lifting objects weighing up 30 pounds, and lifting up to 50 pounds unassisted. His duties also require lifting/carrying, or dragging a person who is unconscious; detaining a suspect; separating uncooperative individuals; protecting the public from harm;

and, placing leg restraints on a suspect. The job also requires the officer to be able to climb up and down stairs, run, and climb over fences. The officer may also be involved in altercations with individuals during an arrest.

Petitioner testified that he is ambidextrous, but shoots his gun with his left hand, and writes with his right hand. Petitioner testified that he sustained scars on his nose, forehead, and around his eyes due to the injuries he sustained as a result of the accident. He also testified that with respect to his eyes, he has to wait for the glass to push itself out on its own.

Petitioner testified that currently he does not over extend himself. He testified that he has pain every day, but the cold weather increases the pain. He also noted that the hardware is still in his hip, and at some point in the future the hardware may need to be removed, and he may need a hip replacement.

Petitioner testified that he keeps an EpiPen with him at all times because he may be allergic to the fibers that were used to rebuild his right hand/thumb. He carries the EpiPen following a trip to the hospital in March of 2022 for treatment of an apparent allergic reaction. Petitioner testified that at that time he had hives that spread from his right hand up his right arm, that were itchy from the inside.

With respect to his right thumb/wrist, petitioner testified that he occasionally experiences an ache or sharp pain from the nerve.

Petitioner testified that he was informed that he had the opportunity to consider a line of duty disability as a result of his injury, but petitioner testified that the goal during the course of his medical treatment was to get back to work. Petitioner gave full effort in his work assessment to get back to work, and went back to work as soon as light duty was offered.

Petitioner testified that since returning to work full duty he has adjusted to a lighter participation as a detective. He testified that he tries not to overwork his hip.

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 arbitrator notes petitioner was detective for respondent on 10/2/20, and returned to that position after being released to return to work on 6/9/21. Petitioner is able to perform all duties of a detective, but testified that he has adjusted to a lighter participation as a detective. He participates in surveillance and intelligence work, and tries to not overuse his hip. The arbitrator notes that the job description for a police officer/detective with respondent falls into the heavy duty physical demand level. For these reasons, the arbitrator gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the age of the employee, the arbitrator notes petitioner was 45 years old on the date of injury. Given his age of 45 years old on the date of hearing, the arbitrator finds that petitioner probably has at least 15-20 years of gainful employment remaining. For this reason, the Arbitrator gives some weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the petitioner testified that his income was not negatively impacted as a result of the accident he sustained on 10/2/20. For this reason, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the petitioner sustained a right hip dislocation with an acetabular fracture, for which petitioner underwent a closed reduction of petitioner's right hip with placement of a traction pin, and an open reduction and internal fixation of his right acetabulum. Dr. Corpus then ordered a repeat CT scan of petitioner's pelvis to evaluate petitioner for bone fragments within the acetabulum. Dr. Corpus then transferred petitioner's care to Dr. Negem for definitive pelvis fixation. Petitioner was placed in traction pending the next surgery. Petitioner still has the hardware in his body and it may need to come out, and he may need a hip replacement.

On 10/5/20 Dr. Negem performed an open reduction and internal fixation of the right posterior wall acetabulum fracture, removal of loose bodies in the right hip, and removal of the previously placed traction pin. Petitioner also underwent a right thumb ulnar collateral ligament reconstruction with free tendon graft performed by Dr. Vander Naalt. Due to the delay in the surgery, significant scar tissue was removed to allow the native ligament to be visualized. FiberWire sutures were placed within the ligament with locking stitches. A strip of palmaris longus needed to be harvested to allow for a ligament suture tape reconstruction.

Petitioner also sustained face abrasions and lacerations that resulted in scarring across his eye area up to his forehead. Petitioner also had windshield glass imbedded in his left eye that eventually worked its way out. Petitioner also experienced knee pain.

Petitioner underwent extensive physical therapy for his injuries. Petitioner also carries an EpiPen because he had an allergic reaction around the site of his right hand surgery and he was told he may be allergic to the sutures that were used in his right hand operation.

Petitioner testified that he tries not to overwork his right hip. He also testified that his right hip and leg become painful in the winter months. With respect to his right hand, the petitioner testified that sometimes his right thumb aches or he experiences a sharp nerve shocks.

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 following:

- the petitioner sustained a 35% loss of use of his right leg pursuant to Section 8(e)12 of the Act;
- the petitioner sustained a 25% loss of use of his right thumb pursuant to Section 8(e)1 of the Act;
- the petitioner sustained a 7.5% loss of use of his right middle finger pursuant to Section 8(e)3 of the Act;
- the petitioner sustained a 7.5% loss of use of his left eye pursuant to Section 8(e)13 of the Act;
- the petitioner sustained a 7.5% loss of use of his person as a whole pursuant to Section 8(d)2 of the Act;
- the petitioner sustained a 10% loss of use of his right hand pursuant to Section 8(e)9 of the Act;
and,
- the petitioner sustained 10 weeks of disfigurement pursuant to Section 8(c) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC016658
Case Name	Christopher Crabtree v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0464
Number of Pages of Decision	19
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 11/17/2025

/s/Frank Soto, Commissioner

Signature

18 WC 16658

Page 1

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)
☐ Modify Choose direction	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTOPHER CRABTREE,

Petitioner,

vs.

NO: 18 WC 16658

STATE OF ILLINOIS, PINCKNEYVILLE
 CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under §19(b) by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the MMI date, medical expenses, temporary total disability benefits, and prospective care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission 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 December 17, 2024 is hereby affirmed and adopted.

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

18 WC 16658

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

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

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

November 17, 2025

O: 11/5/25

FJS/met

046

/s/ Frank J. Soto
Frank J. Soto

/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC016658
Case Name	Christopher Crabtree v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 12/17/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 17, 2024 4.16%

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



December 17, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
 COUNTY OF Madison)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Christopher Crabtree

Employee/Petitioner

v.

State of IL / Pinckneyville Correctional Center

Employer/Respondent

Case # **18** WC **16658**

Consolidated cases: _____

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **04/10/2018**, 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 **\$65,532.38**; the average weekly wage was **\$1,260.24**.

On the date of accident, Petitioner was **41** 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 **\$24,881.31** for other benefits, for a total credit of **\$24,881.31**.

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

ORDER

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

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

Respondent shall authorize and pay for the prospective treatment recommended by Dr. Bradley, including right shoulder revision surgery and post-surgical treatment.

Respondent shall pay Petitioner temporary total disability benefits of \$840.16/week for 44 1/7 weeks, commencing September 28, 2023, through August 1, 2024, as provided in Section 8(b) 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 17, 2024

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) the causal connection between the accident and the Petitioner's current right shoulder condition; 2) payment of medical bills associated with the Petitioner's right shoulder; 3) entitlement to prospective medical care to the Petitioner's right shoulder; and 4) entitlement to TTD benefits from September 28, 2023, through August 1, 2024.

A hearing was previously held on April 28, 2022, regarding injuries to the Petitioner's left upper extremity. (RX4) On July 11, 2022, the Arbitrator found these injuries to be causally related to the accident of April 10, 2018, and ordered payment of medical expenses. (Id.) The Commission affirmed and adopted this decision without changes on August 14, 2023. (Id.) The findings from the Arbitrator's decision are incorporated herein.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 41 years old and employed by the Respondent as a correctional officer. (RX4, PX11) On April 10, 2018, he escorted an inmate to the healthcare unit for a medical examination. (RX4, PX11, T. 10) The inmate began assaulting a nurse practitioner, and the Petitioner intervened. (RX4, PX11, T. 11) During the scuffle, both the inmate and the Petitioner fell to the floor, with the Petitioner ending up on the bottom of a pile of people. (Id.) He testified that he injured his left hand, elbow and arm and his right knee, lower back and right shoulder. (RX4, PX11, T. 12) At the time of the April 28, 2022, hearing, the Petitioner testified that his right knee and right shoulder were "doing good." (RX4, PX11)

A First Report of Injury completed on the day of the accident stated that the Petitioner had swelling and pain in his left hand, right knee pain and soreness in his low back and right shoulder.

(PX10, PX11, RX4, T. 12-13) In a Workers' Compensation Employee's Notice of Injury signed by the Petitioner, the Petitioner reported injuries to his left hand, right knee, lower back and right shoulder. (PX10, PX11, RX4, T. 13-14) A Supervisor's Report of Injury or Illness stated that the Petitioner had pain in his left hand, left elbow, right knee and lower back. (RX1, RX4, PX10, PX11) Another incident report listed pain in the left hand and right knee. (RX1)

Immediately after the accident, the Petitioner went to the emergency department at Pinckneyville Community Hospital and complained of pain in his left hand and right knee and generalized aches in his right scapular area and right low back. (PX14) His right knee, left fingers, back and pelvis were examined. (Id.) The Petitioner was diagnosed with a strained left hand and a contused right knee. (Id.)

On April 11, 2018, the Petitioner presented to Workcare West Occupational Medicine Clinic with a primary complaint of pain in the left hand, secondary complaint of pain in the right knee and tertiary complaint of pain in the right shoulder that he described as aching and considered it be minimal. (PX15) He said the shoulder pain seemed to be variable depending on activity level and was made worse by movement. (Id.) An examination revealed pain with motion in the right shoulder but no abrasion, bruising, erythema, rash or swelling. (Id.) The Petitioner was diagnosed with contusions of the right knee, left hand and right shoulder. (Id.) At a visit on April 17, 2018, the right shoulder was not examined, and the diagnosis for the right shoulder was dropped. (Id.) The Petitioner was discharged from care. (Id.)

Beginning April 17, 2018, The Petitioner treated for his left upper extremity with Dr. Steven Young, an orthopedic surgeon at the Orthopaedic Institute of Southern Illinois; then with Dr. George Paletta, an orthopedic surgeon at The Orthopedic Center of St. Louis; again with Dr. Young; and then with Dr. Shawn Kutnik, an orthopedic surgeon at Archway Orthopedics. (Id.)

There was no reference to the Petitioner's right shoulder in Dr. Young or Dr. Paletta's records. (PX16, PX18) At a visit to Dr. Kutnik on August 23, 2023, the Petitioner reported some persistent pain in the right shoulder mostly along the anterior aspect and superiorly that he estimated had been present around 10-12 months and developed as he had been trying to recover from the left arm injury. (PX4) The Petitioner underwent surgery on his left hand and elbow by Dr. Kutnik on September 28, 2023, and was taken off work. (PX4, T. 18-19)

After the surgery, the Petitioner returned to Dr. Kutnik on October 13, 2023, and reported some ongoing shoulder pain. (PX4) Dr. Kutnik referred the Petitioner to Dr. Matthew Bradley, an orthopedic surgeon at Metro East Orthopedics, and put the Petitioner on light duty restrictions. (Id.) On December 13, 2023, Dr. Kutnik found the Petitioner to be at maximum medical improvement regarding his left upper extremity and allowed him to return to work full duty. (Id.)

The Petitioner testified that he did not believe Dr. Young treats shoulders. (T. 17) The Petitioner said that from April 2018 until October 2023, none of his doctors focused on treating his right shoulder and he had not seen any doctors specifically for his right shoulder. (T. 24) He said he working during that time, and the longer he worked, the worse his shoulder got. (T. 24-25) He said that when he testified in April 2022, his shoulder wasn't bad, but over time it got worse. (T. 25) He said that the longer he went with his left arm not working, he had to work harder with his right, and "that's when it got worse and worse and worse." (Id.)

The Petitioner saw Dr. Bradley on October 23, 2023, with complaints of right shoulder pain, he gave a history of the accident and his treatment and explained that there were delays with the COVID pandemic and litigation. (PX7) He said that during this period, he was not able to use his left upper extremity, forcing him to use the right upper extremity and causing him to notice pain and inability to use his right arm to a normal degree. (Id.) He reported pain with elevation

over shoulder level and using supination, such as using screwdrivers. (Id.) After an examination and X-rays, Dr. Bradley diagnosed right shoulder pain with underlying labral tear and ordered an MRI. (Id.)

The MRI arthrogram was performed on October 26, 2023, by MRI Partners of Chesterfield. (PX3) Radiologist Dr. Matthew Ruyle found: 1) superior labrum anterior to posterior (SLAP) tear extending from 10 o'clock to 2 o'clock positions; 2) likely upper subscapularis intrasubstance partial tearing that may have been high grade; 3) bursal-sided supraspinatus fraying and probable 70 percent distal partial tear; and 4) low-lying coracoacromial ligament resulting in supraspinatus outlet stenosis and myotendinous junction impingement. (Id.)

The same day, the Petitioner saw Dr. Bradley, who agreed with Dr. Ruyle's reading of the MRI and diagnosed a right shoulder high-grade partial-thickness rotator cuff tear of the supraspinatus, a SLAP tear, subacromial impingement syndrome and a longitudinal tear to the subscapularis. (PX7) He said the injuries were consistent with the mechanism of injury and recommended surgery. (Id.) He gave work restrictions of no lifting greater than 2 pounds, no pushing/pulling greater than 5 pounds and no repetitive overhead use of the right upper extremity. (Id.)

On December 8, 2023, Dr. Bradley performed a subscapularis repair, biceps tenotomy, labral debridement, subacromial bursectomy with bony decompression and a supraspinatus rotator cuff repair. (PX7, PX8) He took the Petitioner off work. (PX7) On December 21, 2023, Dr. Bradley gave work restrictions of desk work only, no use of the right upper extremity, being in a sling at all times and no inmate contact. (Id.) On February 8, 2024, Dr. Bradley gave work restrictions of no lifting greater than 1 pound to shoulder level, no pushing/pulling greater than 2 pounds, no repetitive or overhead use of the right upper extremity and no inmate contact. (Id.)

The Petitioner testified that the Respondent would not let him come back to work on light duty. (T. 22)

The Petitioner underwent physical therapy at Athletico Physical Therapy from January 4, 2024, through March 29, 2024, for a total of 25 visits. (PX6) He was reevaluated on April 2, 2024, and reported that his right shoulder was still getting better but didn't have full motion, making it difficult to reach overhead. (Id.) He said the worse pain was in the morning upon waking. (Id.) The therapist issued a Functional Status Report, stating that the Petitioner was able to lift 50 pounds floor to waist, carry 80 pounds and pull 65 pounds. (Id.) He was unable to reach a 50-pound requirement for waist-to-shoulder lifting and pushing. (Id.)

The Petitioner testified that he was getting better after the surgery but by April 2024 he still had not gained full strength and movement. (T. 21-22)

On April 3, 2024, the Petitioner underwent a Section 12 examination by Dr. Michael Nogalski, an orthopedic surgeon at Orthopedic Associates. (RX2) The Petitioner told Dr. Nogalski that his right shoulder had been hurting him all along and worsened over time. (Id.) He said he was fighting so hard for the left arm and upper extremity that nothing happened with the right shoulder. (Id.) He said he told the medical providers at the Orthopaedic Institute of Southern Illinois. (Id.) A physical examination of the right shoulder showed decreased range of motion compared to the left, diminished strength, no focal rotator cuff deficit, some pain with maximum muscle testing and negative Spurling's signs. (Id.) Dr. Nogalski reviewed medical records, including the October 26, 2023, MRI report, but not the scans themselves. (Id.)

Dr. Nogalski concluded that there was not a causal relationship between the current status of the Petitioner's right shoulder and the reported accident in that the Petitioner's condition was due to pre-existing rotator cuff tendinopathy and superior labral detachment. (Id.) He said the

MRI findings and description of arthroscopic findings were consistent with rotator cuff tendinopathy especially within the context of a lack of right shoulder complaints for numerous visits to multiple providers over a period of seven years after the claimed injury and with no contemporaneous complaints of injury to the right shoulder. (Id.) He noted that after the injury, the Petitioner worked as a prison guard and maintenance man, ostensibly with less function of the left upper extremity due to symptoms there. (Id.) He said it would be more likely that the Petitioner would complain of right shoulder symptoms to Dr. Young and Dr. Paletta if he had to use the right shoulder more because of the left upper extremity problems. (Id.)

Dr. Nogalski also stated that both rotator cuff tendon changes and superior labral detachments are reasonable in patients in their 40's. (Id.) He said the area of complaint at the time of the injury – low back and scapular region – was not consistent with injury to the rotator cuff nor labrum. (Id.)

Regarding treatment for the right shoulder, Dr. Nogalski did not believe Dr. Bradley's treatment was reasonable or necessary relative to either the work injury or the pre-existing shoulder condition. (Id.) He said the pre-existing shoulder condition could reasonably have been addressed with non-surgical treatment and characterized the surgery as "an elective decision by Dr. Bradley." (Id.) He said that irrespective of cause, the Petitioner required further rehabilitation for his shoulder due to his post-surgical status. (Id.) Dr. Nogalski declared the Petitioner to be at maximum medical improvement as to the right shoulder as of April 17, 2018 – his second visit to Workcare. (Id.)

As to work restrictions, Dr. Nogalski said that irrespective of cause, minimum restrictions of no lifting more than five pounds and no use of the right upper extremity over the shoulder were indicated. (Id.)

The Petitioner differed with Dr. Nogalski's statement that there was no notation of right shoulder complaints in the medical records for seven years. (T. 26) On cross-examination, the Petitioner acknowledged that it has been six years. (T. 28) The medical records showed it was approximately 5½ years.

At a follow-up visit with Dr. Bradley on April 4, 2024, the Petitioner reported doing well overall. (PX7) He felt like he was making improvements with his range of motion and strength but continued to have pain. (Id.) Dr. Bradley stated that the Petitioner didn't have frozen shoulder, and he was able to easily get him to near full motion with passive motion. (Id.) However, active motion had decreased, and he still had profound weakness to testing of the supraspinatus, although his subscapularis was fairly strong. (Id.) Dr. Bradley ordered a repeat MRI scan with contrast to be sure there was healing of the rotator cuff. (Id.) He continued work restrictions. (Id.)

The MRI was performed that day, and Dr. Bradley read it as showing a recurrent tear of the distal supraspinatus tendon. (Id.) At a telehealth visit on April 15, 2024, Dr. Bradley recommended right shoulder revision of the supraspinatus rotator cuff repair. (Id.)

On August 1, 2024, the Petitioner reported to Dr. Bradley that the surgery was denied by his insurance. (Id.) He said he had been doing a good home exercise program. (Id.) He said that his range of motion and strength were not normal, but his pain was significantly improved to the point that he felt he could return to work without restrictions, which Dr. Bradley allowed. (Id.) The Petitioner testified that he was trying to work and limit his condition. (T. 23)

Dr. Bradley testified consistently with his records at a deposition on May 24, 2024. (PX12) He said his initial examination revealed a lack of range of motion in the right shoulder and a weak rotator cuff with a "pretty significant amount of pain." (Id.) He said the tests he performed were

positive for impingement, biceps tendon issues and rotator cuff tears. (Id.) He said the Petitioner's symptoms were consistent with the examination and the pathology he saw in the imaging studies. (Id.) He found that the mechanism of injury described by the Petitioner was consistent with a rotator cuff tear and a SLAP tear. (Id.) He noted that the Petitioner reported no problems with his shoulder prior to the work accident and no significant injuries after that. (Id.) He said that he was left to conclude that the injury sustained in the work accident at least contributed to and, most likely, was solely responsible for the tears. (Id.) He explained that in the process of falling to the ground in the scuffle, the Petitioner reached out to try and brace his fall, landing on the right shoulder and jamming the ball into the shoulder socket and encounters the top of the labrum and the front of the rotator cuff, tearing both structures. (Id.) Dr. Bradley stated that his intraoperative findings were consistent with the physical examination and MRI scan. (Id.)

As to whether the Petitioner's shoulder injuries were age-related, Dr. Bradley said the Petitioner didn't have significant arthritis in his shoulder. (Id.) He said that because the accident occurred five years prior to the shoulder treatment, there was a level of degeneration within the tendon, but he didn't see any other degeneration within the shoulder that would make the tears an age-degenerative, spontaneous kind of problem. (Id.)

Regarding the time lapse between the accident and treatment for the right shoulder, Dr. Bradley thought the original mechanism of injury caused the tears, and having to use the right arm more and more while being treated for the left brought on the right shoulder symptoms and made them worse. (Id.)

Dr. Bradley testified that after the surgery, the Petitioner was progressing as expected, but as of April 4, 2024, he noticed that the Petitioner's active range of motion "wasn't there," and he was "pretty weak." (Id.) He said he wanted to get an MRI before moving more aggressively with

further therapy to make sure everything was healing correctly. (Id.) He explained the MRI finding of a re-tear of the rotator cuff by stating that rotator cuffs in general have a pretty high rate of failure to heal and that because of the many years before getting to it surgically, there was a fairly significant amount of atrophy and chronic changes. (Id.) He said he recommended surgery due to the location of the tear and retraction. (Id.) He said that medical literature showed that type of tear and the symptoms will continue to get worse without fixing the tear. (Id.)

On cross-examination, Dr. Bradley acknowledged that treatment for the Petitioner's right shoulder and left upper extremity could have been coordinated and treated at the same time. (Id.)

Dr. Nogalski did not testify.

The Petitioner testified that he would like to get the surgery, get full use of his arm again and not be in pain. (T. 23-24) He said that when he returns to Dr. Bradley in November 2024, he will report that his loss of strength, loss of motion and pain have gotten worse. (T. 37)

The Petitioner said he had not had any new accidents or injuries since April 10, 2018. (T. 24) He stated that on the day of the accident and while treating for the left upper extremity, his left hand and elbow were his greatest concerns. (T. 40-41) He said his shoulder would hurt at times depending on usage, and over the past year and a half it "really started getting bad." (T. 41)

At the time of arbitration, the Petitioner had been working since January 2019 as a corrections maintenance craftsman, which he said involved more manual labor than being a correctional officer but without inmate contact. (T. 11, 27, 32) He said his right shoulder is sore and limited, but his supervisor is able to work with him. (T. 27)

CONCLUSIONS OF LAW

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

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

An accident need not be the sole or primary cause so long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 ILL. App. 3d 882, 888 (2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982).

Dr. Nogalski believed the Petitioner had pre-existing rotator cuff tendinopathy and superior labral detachment. He based his causation opinion on the lack of right shoulder complaints during the time he was treating for his left arm and hand, which he references several times in his report, and there being no contemporaneous complaints of injury to the right shoulder.

There are several reasons that the Arbitrator declines to rely on Dr. Nogalski's opinions. As to his reliance on there being no contemporaneous complaints of injury to the right shoulder, the accident reports list shoulder complaints at the time of the accident. Dr. Nogalski also pointed to the Petitioner's complaint of scapular pain at the emergency room as being inconsistent with the rotator cuff and SLAP tears. However, the Arbitrator notes that the emergency room personnel apparently did not examine the Petitioner's shoulder.

Dr. Nogalski's rationale did not explain from a physiological standpoint why he believed the shoulder tears pre-existed the work accident. Dr. Bradley explained how the tears were consistent with the mechanism of injury and would have occurred at the time of the accident, worsening while the Petitioner was undergoing treatment on his left upper extremity and using his right arm more.

The Arbitrator finds the gap in the Petitioner's treatment does not break the causal connection between the accident and her current symptoms. Where a gap in treatment exists, "(t)he ultimate issue is not whether there was a gap in treatment but rather, whether the initial accident was a causative factor in the condition of ill-being which was produced." *William Gordon v. State of Illinois DOT Joliet Yard*, 07 I.W.C.C. 1599 (2007). The important issue is whether the symptoms and findings later in the treatment match up to the symptoms immediately following the accident, and whether the gap was logically explained. *Id.* In that case, the claimant did not seek treatment for almost nine months at one point and four months after that. *Id.* In *Sharon Langorgen v. K-Mart*, 09 I.W.C.C. 1160 (2009), the Commission recognized that, although there was a gap in formal treatment for two years, the claimant continued to identify the accidental injury as the source of her complaints without rebuttal. *Id.* The Commission relied on her credible testimony and the circumstantial evidence, which showed an absence of any intervening accident, in holding that causal chain remained unbroken and awarding benefits. *Id.*

As in those cases, the gap in treatment does not defeat this Petitioner's claim. The Petitioner, whom the Arbitrator found to be credible, explained that the initial treatment was focused on his left arm and hand. There were significant delays in treating those conditions due to litigation. There were no intervening incidents to explain his continued symptoms and the pathology noted by Dr. Bradley.

Lastly, Dr. Bradley's opinions also deserve greater weight because – as the Petitioner's treating physician – he was more familiar with the Petitioner and his condition.

For all of these reasons, the Arbitrator gives greater weight to Dr. Bradley's opinions than to Dr. Nogalski's and finds that the Petitioner's current right shoulder condition is causally related to the accident of April 10, 2018.

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).

For the reasons stated above, the Arbitrator relies upon Dr. Bradley deeming that the treatment for the Petitioner's right shoulder was reasonable and necessary rather than on Dr. Nogalski's opinion that this was an "elective" surgery.

The Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 1 pursuant to Section 8(a) of the Act. The Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which a third party, such as the Petitioner's health insurance carrier, 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).

Dr. Bradley explained how the re-tear of the Petitioner's rotator cuff occurred. There was no intervening accident that would break the causal connection between the re-tear and the original injury. The Arbitrator finds the surgery recommended by Dr. Bradley is necessary to relieve or cure the effects of the Petitioner's injury.

Therefore, the Petitioner is entitled to prospective medical care for his right shoulder, including surgery as recommended by Dr. Bradley. The Respondent shall authorize and pay for such.

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

"The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force." *Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Comm'n*, 236 Ill.2d 132, 146, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010). "Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Id.*

The Petitioner was taken off work for his left upper extremity surgery, then placed on restrictions until August 1, 2024, which were not accommodated by the Respondent. Therefore, the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 44 and 1/7 weeks, from September 28, 2023, through August 1, 2024. The Respondent is entitled to a credit of \$24,881.31 for extended 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC007115
Case Name	Greg S. Mineff v. Rockford Toolcraft, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0465
Number of Pages of Decision	11
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Gregory Szul
Respondent Attorney	Jennifer Rizk-O'Lynnger

DATE FILED: 11/19/2025

/s/ Raychel Wesley, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 WINNEBAGO

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GREG S. MINEFF,
 Petitioner,

vs.

NO: 23 WC 07115

ROCKFORD TOOLCRAFT, INC.,
 Respondent.

DECISION AND OPINION ON REVIEW

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

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

November 19, 2025

RAW/wde

/s/ *Raychel A. Wesley*

D: 9/24/25

/s/ *Carolyn M. Doherty*

43

/s/ *Frank J. Soto*

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC007115
Case Name	Greg S. Mineff v. Rockford Toolcraft, Inc.
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Kylee Miller
Respondent Attorney	Jennifer Rizk-O'Lynnger

DATE FILED: 12/31/2024

/s/ Paul Seal, Arbitrator
Signature

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

STATE OF ILLINOIS)
) SS.
 COUNTY OF WINNEBAGO)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

GREG S. MINEFF,
 Employee/Petitioner

Case # **23 WC 7115**

v.

Consolidated cases:

ROCKFORD TOOLCRAFT, INC.
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **PAUL-ERIC SEAL**, Arbitrator of the Commission, in the city of **ROCKFORD**, on **10/31/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/17/2021**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did 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.

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

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

ORDER

Claim for compensation denied. Petitioner failed to prove that he sustained an injury that arose out of and in the course his employment.

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

December 31, 2024

STATEMENT OF FACTS

Petitioner, Greg Mineff, is employed by Rockford Toolcraft, Inc. and works as a robotic welder. He has been employed by Rockford Toolcraft, hereafter “Respondent,” since September 4, 2012. Petitioner was employed in this capacity on the alleged date of accident, December 17, 2021. He testified he felt abdominal pain while moving twisting, bending, and lifting parts. He testified he told his supervisor, David Love, but did not believe it was an injury which required medical treatment, and an accident report was not completed. He testified that he had sustained other minor injuries, including a laceration on his arm, for which accident reports had not been completed.

Mr. Daniel McKee, the HR Manager and Safety Director for Respondent, testified there is a procedure in place for reporting injuries. When a supervisor is advised of a work-related injury, the supervisor initiates an accident report, which is completed with Mr. McKee. Mr. McKee testified Petitioner did not report a work injury on December 17, 2021, and that no accident report was completed on that date.

Mr. David Love, a supervisor for Respondent, has been Petitioner’s supervisor since at least December 2021. He testified that he knows and follows the accident reporting procedure for Respondent. He described the same procedure that Mr. McKee described. He testified he did not recall Petitioner reporting abdominal pain or a pulled muscle in December 2021, and that he never completed an accident report regarding such an injury.

Petitioner did not seek medical treatment regarding abdominal pain until August 25, 2022, when he was seen by a physician’s assistant regarding a left-sided hernia. He reported he worked in a metal fabricating factory and occasionally performed heavy lifting, but he did not report a specific incident that caused the hernia, nor a specific date. He simply stated he noticed the mass on the left side 8 months earlier. The physician’s assistant referred him to general surgery and advised him to avoid heavy lifting and straining. (Px.3)

Petitioner returned to Crusader Clinic on October 13, 2022. He had not yet been evaluated by a surgeon. He reported a persistent left inguinal hernia which he had had for “quite some time” but had worsened over the past 8-9 months. This physician’s assistant referred Petitioner to a general surgeon at Mercy Health for evaluation regarding a hernia repair. (*Id*)

Mr. McKee sent an email to another HR coordinator for Respondent on October 19, 2022 indicating Petitioner would require FMLA for an upcoming surgery. (Rx.5) There is no indication Petitioner reported this was a work-related injury at that time. Mr. McKee testified this is the first notice Respondent received that Petitioner had a hernia.

Petitioner then came under the care of Dr. Hayden Hollister at Mercy Health on October 27, 2022. Dr. Hollister evaluated Petitioner regarding a left and inguinal hernia. Petitioner told Dr. Hollister he felt the hernia had been present for about 10 months, but that he had not undergone treatment due to his wife being ill. He reported mild pain and pressure initially, but felt the pain was now increasing. Petitioner reported he had a physical job, and that the discomfort was causing quite a bit of limitation at work. He denied any similar symptoms on the right. On examination, Dr. Hollister noted an evident left inguinal hernia, which was partially reducible and mildly tender.

Dr. Hollister also noted a right groin bulge without tenderness. Petitioner had full strength throughout his extremities and no neurologic deficits. He felt Petitioner had an enlarging, symptomatic left inguinal hernia, and likely a right inguinal hernia as well based on his examination. He recommended Petitioner proceed with a repair in the near future. As he suspected bilateral hernias, he recommended a robotic assisted laparoscopic repair. (Px2)

Petitioner testified that he continued working full duty following this alleged accident. He lost time from work for other medical conditions, his wife's serious illness and death, and other reasons unrelated to abdominal pain. Though he told Dr. Hollister he had limitations at work, he testified that he worked full duty until he was placed off work to undergo the hernia repair. Mr. Love confirmed that he worked with Petitioner almost every shift between December 2021 and November 2022, and he never reported difficulty working, never requested assistance from co-workers to perform his work duties, and never requested a light duty or accommodated position.

Petitioner underwent preoperative cardiac clearance on November 2, 2022. (Px.4) Mr. McKee received confirmation that Petitioner would be undergoing hernia surgery and was provided short-term disability information. (Rx.5) There is again no mention of the hernia being related to a work incident or Petitioner's work activities.

Dr. Hollister performed a robotic assisted laparoscopic bilateral inguinal hernia repair with mesh placement on November 9, 2022. (Px.4)

Petitioner admitted that he knew how to contact the HR department, and did on multiple occasions between December 2021 and November 30, 2022. He further admitted that he advised Respondent of the hernia surgery, and about his anticipated return to work thereafter, without reporting it was due to a work injury.

Petitioner left a voicemail for Mr. McKee on November 23, 2022 indicating he was recovering from surgery and was in the process of filing for short-term disability. (Rx.5) He did not report the surgery was related to a work accident or work injury, and even confirmed he was looking into short-term disability. That same day, Petitioner contacted the HR department to confirm he was expecting a light duty release as of December 5, 2022. Mr. McKee confirmed Petitioner could not return to work, as this was not a workers' compensation claim. (*Id*) It is not noted anywhere in the evidence that Petitioner reported his hernias were related to a work injury until November 30, 2022, when Respondent received notice of the claim. (*Id*) On that date, an accident report was completed by Petitioner and Mr. McKee. (Rx.2) Mr. McKee testified this is the only accident report completed regarding Petitioner's abdominal condition. He confirmed that this accident report was completed the day Respondent learned of the alleged work-related injury.

In this accident report, Petitioner indicated the date of injury is December 12, 2021. (*Id*). In his Application, he alleges an accident date of December 17, 2021. (Arb.2) He initially testified he was injured on December 17, 2021. When the discrepancy was shown in the Accident Report, he testified he could not recall the exact date, but knew it was sometime around the death of his brother-in-law. There is no indication in Petitioner's attendance records that he lost time from work due to a death in the family in December 2021. Furthermore, he did not work on December 12, 2021. The only day Petitioner is noted to have called in that month is December 23, 2021. (Rx.3)

Petitioner returned to Dr. Hollister post-operatively on December 8, 2022. He reported he was doing well overall but had some persistent tenderness in his left groin. Dr. Hollister felt the healing process was progressing and advised him to remain off work until the following Monday with light duty restrictions for one week. (Px.2)

Petitioner returned to light duty work on December 12, 2022. (Rx.4) He contacted Dr. Hollister's office on December 20, 2022 and reported increased abdominal pain after he returned to full duty work the day prior. Dr. Hollister placed Petitioner on light duty restrictions, lifting up to 15 pounds, through December 23, 2022. (Px.2)

Petitioner contacted Dr. Hollister's office on January 4, 2023 and stated he felt his abdominal muscles were "like jelly." The nurse he spoke with advised Petitioner that it would take time for his muscles to return to the way they were prior to surgery. Petitioner advised he was having some discomfort and would call if his pain worsened. (Px.2) Petitioner did not call or see Dr. Hollister after this date.

Petitioner testified that he did not report a specific incident or accident date to the physician's assistants he saw at Crusader Clinic or to Dr. Hollister. He admitted that there is nothing in the records that reflect a work injury occurred on either December 12, 2021 or December 17, 2021, and nothing from Respondent that confirms he reported the accident before November 30, 2022.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision with respect to (C) Accident, (E) Notice, and (F) Causation, 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). The claimant in a workers' compensation case 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, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980). Included within that burden is proof that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). An injury is accidental within the meaning of the Act when it is traceable to a definite time, place and cause and occurs in the course of employment unexpectedly and without affirmative act or design of the employee. *International Harvester Co. v. Industrial Comm.*, 56 Ill. 2d 84, 89 (Ill. 1973), *Luckenbill v. Industrial Com.*, 155 Ill. App. 3d 106, 110, 507 N.E.2d 1185, 107 Ill. Dec. 816 (4th Dist. 1987)

Petitioner is seeking compensation for a claimed specific injury on December 17, 2021. Petitioner testified that he felt pain in his abdomen when twisting and lifting parts while working. Respondent has disputed the validity of this testimony and disputed that this accident occurred.

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. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 406-07, 459 N.E.2d 963, 76 Ill. Dec. 828 (1984);

Hosteny v. Illinois Workers' Compensation Comm'n, 397 Ill. App. 3d 665, 675, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041, 721 N.E.2d 1165, 242 Ill. Dec. 634 (1999).

Having heard the testimony and reviewed the totality of the evidence, the Arbitrator does not find Petitioner's testimony credible. The Arbitrator notes that nearly every piece of evidence entered contradicts Petitioner's testimony. Petitioner's testimony of the events of December 17, 2021 are contradicted by the testimony of Daniel McKee and David Love, records from Crusader Clinic and Mercy Health, his own testimony, and the reasonable inferences taken from the testimony.

Petitioner alleges an acute incident occurring December 17, 2021 caused abdominal pain, which was diagnosed as bilateral hernias much later. He appears to have recalled the date of the injury only after undergoing surgery to repair the hernias nearly a full year later. He saw two different physician's assistants at Crusader Clinic in August and October 2022, and while he reported he performed a physical job, he did not describe an acute incident or specific date of injury. He then began treating with Dr. Hollister in October 2022, and again failed to report a specific incident at work, or even a specific date of injury.

Petitioner worked full duty and his regular hours for the period of December 17, 2021 through November 30, 2022, performing the very tasks he claimed caused his injury, without reporting the injury to Respondent and without reporting difficulty performing those tasks. Petitioner's reports of an injury occurring December 17, 2021 are contradicted by his ability to continue working full duty through November 2022.

Petitioner's lack of credibility applies to his claim to have provided notice to David Love of the accident on December 17, 2021. While Petitioner initially testified the accident occurred on December 17, 2021, he later admitted that he completed the only accident report regarding this alleged injury on November 30, 2022, in which he listed the accident date as December 12, 2021. He then admitted he could not recall the actual date of this incident. Mr. Love testified he had no recollection of Petitioner reporting an injury or accident on December 12 or December 17, 2021.

The Arbitrator notes that the only evidence of notice of the accident is the November 30, 2022 accident report, completed 11 months after the alleged incident. This confirms Petitioner did not provide notice of a work-related accident within the 45 day period required by the Act. Furthermore, Petitioner contacted Respondent several times in November 2022 regarding his hernia surgery, and he never reported the hernias were due to a work injury or work activities. He requested FMLA and short-term disability information, but never inquired about workers' compensation information.

Based on the record in its entirety, the Arbitrator finds that Petitioner failed to prove by a preponderance of the evidence that he sustained accidental injuries arising out of and in the course of his employment with Respondent on December 17, 2021, and further failed to prove that he provided notice of any accident within the time limits stated in the Act.

In support of the Arbitrator's decision with respect to (J) Medical, (K) Temporary Compensation, (L) Nature and Extent, and (N) Credit, the Arbitrator finds as follows:

Based upon the Arbitrator's findings with respect to Accident, Notice, and Causal Connection above, the remaining issues of Medical, TTD, Nature and Extent, and Credit, are moot.

Petitioner's claim for compensation for an accident on December 17, 2021 is hereby denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC030147
Case Name	Jonathan Brown v. Tyson Foods, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0466
Number of Pages of Decision	34
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	James Marszalek
Respondent Attorney	Matthew Rokusek

DATE FILED: 11/20/2025

/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 MCLEAN	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ Modify	☐ PTD/Fatal denied
			☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jonathan Brown,

Petitioner,

vs.

NO: 23 WC 30147

Tyson Foods,

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, causation, medical expenses, prospective medical treatment, temporary total disability, and penalties and attorney's fees and being advised of the facts and law, affirms in part and reverses in part the Decision of the Arbitrator as stated below.

In addition to the brief background stated below, the Commission primarily relies on the detailed recitation of the facts provided in the Decision of the Arbitrator. The Commission agrees with the Arbitrator's findings on the issues of accident, causation, medical treatment, prospective medical treatment, and temporary total disability, however, disagrees with the extent of penalties and attorney's fees awarded.

Background

On February 5, 2024, Petitioner was seen by the physician's assistant of his treating physician, Dr. Hussein, at ORA Orthopedics for a reevaluation of his right long and ring fingers and left finger pain that continued after his surgery. PX3; T.154. Petitioner reported an increase in symptoms after returning to work full duty. In addition to conservative treatment measures, including corticosteroid injections in his left ring finger and right long and ring fingers, he was placed back on work restrictions to avoid repetitive activity and no lifting over two pounds bilaterally.

A Tyson Job Activity Notification was issued on February 6, 2023, noting light duty restrictions of “bilateral hands, no lifting greater than two pounds, no repetitive activity”. RX1; T.258. Petitioner’s next doctor’s appointment was noted to be set for March 5, 2024.

These restrictions were accommodated by Respondent until Petitioner’s termination on March 1, 2024. T.20, 35.

On March 8, 2024, Petitioner returned to see Dr. Hussein. PX3; T.156. He had continued pain and stiffness in his bilateral hands, worse in the right index and left index fingers. Dr. Hussein prescribed trigger finger releases for both index fingers. Dr. Hussein noted that Petitioner was released to return to work with restrictions ongoing per occupational health.

On March 15, 2024, Petitioner’s counsel communicated a demand for temporary total disability benefits to Respondent’s counsel. PX7.

Petitioner was seen for a Section 12 examination by Dr. Birman on May 15, 2024. RX3. Dr. Birman diagnosed the Petitioner with right and left middle and ring trigger fingers, which he found were addressed with trigger finger release surgeries. RX3; T.270. He also diagnosed Petitioner with right and left index trigger fingers and left small trigger fingers. He could not relate the index finger conditions to the work injury of March 27, 2023. RX3; T.271-273. He found that Petitioner had worked consistently for about two years with primary complaints at the middle and ring fingers and no consistent report of index finger complaints. He found that due to a delay of the report of index finger complaints the conditions could not be related to the March 27, 2023 injury. He also opined that most trigger fingers were idiopathic and that multiple trigger fingers was more suggestive of a systemic condition. Dr. Birman agreed with the surgical treatment recommendation of the bilateral index trigger finger releases.

Petitioner continued to be followed by Dr. Hussein and as of his last visit on May 30, 2024, he continued to complain of tenderness of the left ring, middle, and small fingers and right index and small fingers. PX3; T.158. He was to continue activity modifications.

Petitioner was evaluated by Dr. Papierski on August 15, 2024, who recommended Petitioner undergo an A1 pulley release and possible tenosynovectomy of the left thumb and index finger with revision of the left ring finger. PX4; T.223. He continued Petitioner’s work restrictions of no lifting over five pounds with both hands. PX4; T.222.

Analysis

The intent of Sections 16, 19(k), and 19(l) of the Act is to “...implement the Act’s purpose to expedite the compensation of industrial workers and to penalize employers who unreasonably, or in bad faith, delay or withhold compensation due an employee.” *Avon Products, Inc. v. Indus. Comm’n*, 82 Ill. 2d 297, 301 (1980). Penalties pursuant to

Section 19(l) of the Act are applicable when an employer fails to pay benefits without good and just cause. *Id.* Courts have likened Section 19(l) penalties to a late fee. However, an award of penalties pursuant to Sections 16 and 19(k) of the Act requires a claimant meet a much higher burden. Section 19(k) of the Act addresses "...situations where there is not only a delay, but the delay is deliberate or the result of bad faith or improper purpose. This is apparent in the statute's use of the terms 'vexatious,' 'intentional' and 'merely frivolous.'" *McMahan v. Indus. Comm'n.*, 183 Ill. 2d 499, 515 (1998). Section 16 of the Act uses the same language and applies to the same situations as Section 19(k) penalties.

Section 19(l) of the Act explicitly provides a remedy for unreasonably delayed payment of benefits under §8(a) or §8(b). The Court in *Theis* also supports the award of penalties under §19(l) in this situation. *Theis v. Ill. Workers' Comp. Comm'n.*, 2017 IL App (1st) 161237WC. The *Theis* Court made it clear that §19(l) penalties applied to the delayed payment of both medical expenses and temporary total disability benefits. *Id.* at ¶20.

The employer bears the burden of justifying a delay in the payment of compensation. See *McMahan v. Indus. Comm'n (Farmer's Elevator)*, 289 Ill. App. 3d 1090, 1093 (1997). Petitioner was working light duty restrictions at the time of his termination, which were based upon, in part, Petitioner's previously accepted fingers. Prior to his termination on March 5, 2024, Respondent had been accommodating said restrictions. The restrictions continued after his termination and as his work restrictions were no longer being accommodated Petitioner became eligible for temporary total disability benefits. The burden shifted to Respondent to show it had a reasonable belief that justified the withholding of benefit payments. *Roodhouse Envelope Co. v. Ill. Indus. Comm'n.*, 276 Ill.App.3d 576 at 579 ("When an employer chooses to delay payment of compensation, it has the burden of showing that it had a reasonable belief that the delay was justified."). Respondent's denial of benefits was based upon the opinions of their Section 12 examiner, Dr. Birman, who evaluated Petitioner on May 14, 2024.

However, on March 14, 2024, well prior to the Section 12 examination, Petitioner provided a demand for temporary total disability benefits. PX7. There was no evidence introduced to suggest Respondent ever provided a response to that demand. There was also no evidence submitted to show any payment was made, despite not having any basis for the denial prior to the May 15, 2024 Section 12 examination. After considering the totality of the evidence, the Commission finds that Respondent did not rebut the §19(l) presumption of an unreasonable delay. We find the delay in the payment of temporary total disability benefits from March 5, 2024 to May 15, 2024 was unreasonable and Petitioner is entitled to penalties pursuant to §19(l) through the date of the independent medical evaluation with Dr. Birman on May 15, 2024.

The Commission also has the discretion to award attorney's fees pursuant to §16 of the Act when it awards §19(k) penalties due to an employer's unreasonable or vexatious delay in paying benefits. Section 16 in relevant part states that "...the Commission may assess all or any part of the attorney's fees and costs..." against an

employer who unreasonably or vexatiously delays payments pursuant to §19(k). In this matter, the Commission does not find the Respondent's delay rose to the level of unreasonable or vexatious. While we disagree with the overall findings of Dr. Birman regarding causation and disability, we do not find Respondent's reliance on his opinion to be unreasonable or vexatious. We reverse the Arbitrator's award of penalties under §19(k) and §16.

For the foregoing reasons we modify the Decision of the Arbitrator and find Respondent be required to pay Petitioner penalties pursuant to Section 19(l).

IT IS THEREFORE ORDERED BY THE COMMISSION Respondent shall pay reasonable and necessary medical services of \$483.00, as provided in Sections 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED that Respondent shall approve and pay for an A1 pulley release and tenosynovectomy of the left thumb and index finger with revision, open trigger release of the left ring finger and all related care.

IT IS FURTHER ORDERED that Respondent shall pay Petitioner temporary total disability benefits of \$562.28/week for 38 1/7 weeks, commencing March 5, 2024 through November 26, 2024, as provided in Section 8(b) of the Act.

IT IS FURTHER ORDERED that Petitioner's Petition for Penalties Under §19(l) is granted.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner penalties pursuant to §19(1) of the Act in the amount of \$2,130.00, representing \$30.00 a day for 71 days from March 5, 2024 through May 14, 2024.

IT IS FURTHER ORDERED that Respondent shall pay to Petitioner penalties pursuant to §19(k) and §16 of the Act is denied.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$34,000.00. 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.

November 20, 2025

o: 9/30/2025

AHS/kjj

051

/s/ Amylee H. Simonovich

Amylee H. Simonovich

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC030147
Case Name	Jonathan Brown v. Tyson Foods, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	29
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	James Marszalek
Respondent Attorney	Matthew Rokusek

DATE FILED: 1/16/2025

/s/ Kurt Carlson, Arbitrator

Signature**INTEREST RATE WEEK OF JANUARY 14 2025 4.18%**

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
19(b) & 8(A)

JONATHAN BROWN

Employee/Petitioner/ steveglobis@aol.com

v.

TYSON FOODS, INC.

Employer/Respondent/ <tesoule@wmlaw.com

Case # **23** WC **030147**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Bloomington**, on **11/26/24**. 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, **03/27/23**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$44,091.84**; the average weekly wage was **\$847.92**.

On the date of accident, Petitioner was **37** years of age, *single* with dependent children.

ORDER***Medical benefits***

Respondent shall pay reasonable and necessary medical services of **\$483.00**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay for and authorize an A1 pulley release and tenosynovectomy of the left thumb and index finger with revision, open trigger release of the left ring finger and all related care.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of **\$562.28/week** for **38 5/7** weeks, commencing **03/01/2024** through **11/26/2024**, as provided in Section 8(b) 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.

Kurt A. Carlson
Arbitrator

JANUARY 16 2025

Jonathan Brown,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No: 23 WC 030147
	)	
Tyson Foods, Inc.,	)	
	)	
Respondent.	)	

FACTS

The sole witness to appear before the Arbitrator was the Petitioner, Jonathan Brown. He testified that he was born on June 14, 1985 and he is right-handed. On August 27 2021, he began working for the Respondent, Tyson Foods, Inc., at their Hillsdale, Illinois location. It is a beef processing plant. In September of 2021, he began working in the, "drop flanks" position. He typically worked eight hours per day, five to 6 days per week. (Tr. 8-11).

In the drop flanks position, he held a "pick", which is a hook device in his left hand, positioned between his ring and middle fingers. He gripped a 12-inch knife in his right hand. Beef carcasses came to him suspended on an overhead line. He grabbed the carcass with the hook in his left hand and made cuts to the carcass with his right hand. He then grabbed the meat that was cut and threw it on a conveyor line. He performed this process approximately 2,500 times per day between October of 2021 and March 27, 2023. (Tr. 12-13).

By March 27, 2023, he was noticing pain and swelling in both hands, including all of his fingers and the thumbs. On that date, he sought treatment with the Respondent's plant Occupational Medicine Department, where he was seen regularly between March 27, 2023 and July 6, 2023. He was placed on restrictions and he was given injection in his hands. The Respondent accommodated his restrictions. He was given a position watching the assembly line. (Tr. 14-15).

At Respondent's plant he was also seen by an on-site physician service on April 26, 2023 and May 10, 2023. Those doctors continued his restrictions and gave him a shot in each hand and then referred him to Dr. Waqas Hussein, at ORA Orthopedics. (Tr. 15-16).

He first saw Dr. Hussein on May 25, 2023. The doctor prescribed surgery for the hands. Surgery was performed on the middle and ring fingers of the right hand on July 7, 2023 and on the left hand on August 21, 2023. After the surgeries, he attended physical therapy for about a month at ORA Physical Therapy. He worked light duty after the surgeries, sitting and watching a conveyor belt. (Tr. 16-17).

On October 16, 2023, he was seen at the Tyson plant by Dr. Gordon of MOHA. Dr. Gordon released him to regular work. He was then assigned a packaging position grabbing six to eight packages of meat, and placing them in a box, and it pushing onto a conveyor belt. He packed about 150 boxes per day. The filled boxes weighed from 60 to 130 pounds.

He began to notice worsening pain and swelling in his hands while performing this position. In February 2024, he returned to ORA Orthopedics because of pain and swelling in his hands. He was placed back on work restrictions and given injections. (Tr. 17-19).

On March 1st, 2024, the Petitioner was terminated by the Respondent because he reached the limit of the Respondent's point system. He missed work to attend a doctor's appointment for an illness unrelated to his hands. He was originally assigned three points for an unexcused absence, which was later changed to one point, which still met the point limit for termination. He has not worked since March 1, 2024. He has looked for work within his restrictions but has been unsuccessful. (Tr.20-21).

On March 14, 2024, he returned to Dr. Hussein who recommended surgeries for the right and left index fingers. The surgery was never performed due to a lack of insurance authorization. (Tr.21).

He saw Dr. Hussein for the last time on May 30th, 2024. He discontinued care there because he could not get his treatment authorized. (Tr. 21-22).

On August 15, 2024, he saw Dr. Paul Papierski, a doctor he had chosen. The doctor prescribed surgery for the left thumb, index, and ring fingers. Petitioner wishes to have the surgery by Dr. Papierski, but does not have medical coverage for it. (Tr.22).

Petitioner testified he continues to notice pain and swelling in his hands. He had no problems with his hands before he worked at Tyson Foods. His health is otherwise fine. (Tr. 23-24).

On cross-examination, the Petitioner agreed that on March 27, 2023 he did not raise any concerns about his index fingers. (Tr. 27). On 7/21/2023 at an ORA visit he denied further complaints to the left hand. (Tr.28). Petitioner did not complain to Dr. Hussein about his index fingers or thumbs on July 21, July 28 or September 29, 2023. (Tr. 29).

Petitioner did not recall telling Dr. Clem that he wanted to return to his job (Tr.31). When he visited on 2/5/2024 his whole hands were in pain (Tr.33). On March 8, 2024 he declined cortisone injections in his index fingers because after his previous injections, the pain came back after a day or two. (Tr.36-37).

On redirect the Petitioner explained that at his March 27, 2023 visit to Tyson Medical, his "whole hands" were swelling. In the left hand the thumb and all of the fingers were swollen (Tr. 41-42). In the right hand, the entire hand was swollen and sore including his thumb and all fingers (Tr.42). His symptoms got better at times and sometimes they were worse. Some parts of his hands got better or worse depending on how much he did or what he did (Tr. 43). When he saw Dr. Hussein on March 8, 2024 he had pain and stiffness in his hands, including both thumbs and all fingers. (Tr. 44).

Petitioner's Exhibit # 1 are the records of Tyson Foods Occupational Medicine Department. Petitioner was seen there between March 27, 2023 and July 6, 2023. At the initial visit on March 27, 2023, the Petitioner presented with the following history:

"Complains of bilateral hand discomfort, left hand swelling. Relates discomfort began last week on Monday. Relates they have been short a worker (Drop flanks) in the morning, so he pulls for both many times throughout the day. Relates once last week he worked two to three hours solo. Rates pain at 6/10. Relates taking APAP and icing hand over the weekend. Relates currently under treatment for hypertension."

The findings at time included swelling to fingers of the left hand and the dorsum of the left hand. Petitioner was unable to make a fist. Flexion was limited in the left middle and ring fingers. He was noted to have left middle finger triggering. On the right his range of motion was intact, he complained of stiffness and pain, and that the right ring and middle fingers triggered as well.

Petitioner was prescribed acetaminophen and was told to apply ice. On April 6, 2023, it was noted his right hand was all good, but he still had pain in the index, middle, and ring fingers of the left hand with triggering of the left ring finger. On April 25, 2023, he was noted to have popping in the right hand and triggering in the left hand. He was found to have pain in the middle and ring fingers and slight popping to the right middle finger. On the left hand, he was noted to have pain to the index, middle, and ring fingers with limited

flexion. Swelling was noted. There was decreased pinch strength to the middle ring and little fingers. He was referred for treatment to MOHA. (Petitioner's Exhibit #1).

On April 26, 2023, the Petitioner was seen by Dr. Robert Gordon of MOHA On-Site Physician Services. The Petitioner provided a history that he worked on the drop flanks job and utilized a knife with the right hand and a hook with the left hand to stabilize the product. He complained of right hand tightness, triggering, and locking of the right long digit and tightness of the right ring finger. On the left hand, he complained of triggering and locking of the ring finger and tightness of the index and long fingers. Dr. Gordon performed corticosteroid injections to the right long finger and the left ring finger. He prescribed finger guards and placed Petitioner on restrictions of no grasping with the bilateral hands.

Petitioner was seen by Dr. Clem of MOHA on May 10, 2023. At that time, he complained of diffuse swelling and locking of the right hand, with some swelling of the left hand with catching of the left middle and ring fingers. He was referred to Dr. Hussein for treatment to the left hand. (Px. 2).

The Petitioner commenced a course of treatment with Dr. Waqas Hussein, of ORA Orthopedics. He was seen by the doctor between May 25, 2023 and May 30, 2024. He provided a history of left hand pain that began on March 7, 2023 at work. He was noted to experience catching and difficulty with recreational

and daily living activities. He had complaints in the left hand of pain, locking/catching, swelling and stiffness. He was diagnosed with triggering of the left hand middle and ring fingers. He was prescribed open middle and ring finger trigger releases. On July 7, 2023, Dr. Hussein performed left hand ring and middle finger open trigger releases, (A1 pulley) and a tenosynovectomy. The postoperative diagnosis was left hand middle and ring finger triggering with tenosynovitis. (Px.3).

The operative report notes the middle finger had localized tenosynovitis. On the ring finger, the doctor noted evidence of tendinosis along the distribution of the flexor tendon with evidence of tenosynovitis. (Px. 3).

Petitioner returned to Dr. Hussein on July 21, 2023. He complained of right hand ring and long finger clicking and popping. The Petitioner was placed on restrictions of left hand light duties, no lifting greater than two pounds, to avoid repetitive grasping and lifting activities. (Px. 3).

Petitioner saw Dr. Hussein again on July 28, 2023, and reported right hand pain that began March/20 at work. He complained of pain and locking, catching, swelling and stiffness. The doctor noted the right hand demonstrated tenderness along the palmar metacarpophalangeal joints, with reproducible triggering of the ring and long fingers. He recommended open trigger releases for the right, middle and ring fingers. (Px. 3).

The surgery was performed on August 21, 2023. The procedure was described as a right hand middle finger open trigger release, (A1 pulley) and a right hand ring finger open trigger release, (A1 pulley with flexor tendon debridement). The operative report noted evidence of partial tearing of the flexor tendon of the ring finger. Evidence of tendinosis was noted in the middle finger. (Px.3).

Petitioner saw Dr. Hussein's physician assistant, Daniel Nichols, on September 1, 2023. Overall, the right hand was feeling well. He complained of continued pain in the proximal interphalangeal joints of the long and ring fingers during terminal flexion. On the left hand he had diminished long and ring finger flexion compared to the index and small fingers. He was prescribed physical therapy and placed on restrictions of no lifting over two pounds and no repetitive activity. He attended physical therapy at ORA Physical Therapy from August 28, 2023 to September 29, 2023. (Px.3).

According to Respondent's Exhibit # 7, Petitioner was found to be an MMI and released for regular duty by Dr. Gordon of MOHA On-Site Physician Services, on October 16, 2023.

On February 5, 2024, the Petitioner returned to ORA Orthopedics and was seen by Dr. Hussein's physician assistant, Daniel Nichols. He reported that when he returned to work after physical therapy, he began repetitive lifting of 100-pound boxes and experienced a worsening stiffness and pain in his right long and ring fingers and left ring finger that has

not improved. He denied any new accidents. Mr. Nichols' examination revealed moderate tenderness and a small nodule at the MCP joints of the right long and ring fingers. On the left hand there was moderate tenderness to palpation over the flexor aspect of the ring finger. The diagnosis was acute recurrent right long and ring finger pain and flexor tenosynovitis, with recent history of open trigger finger releases. The Petitioner was further diagnosed with acute recurrent left ring finger pain and flexor tenosynovitis with a history of trigger finger releases of the left ring finger and left long finger. He was prescribed physical therapy, rest, ice, compression, elevation, activity modification, and oral medications. He was placed back on work restrictions to avoid repetitive activity and no lifting over two pounds bilaterally. He was given corticosteroid injections in the left ring finger and right long and ring fingers. (Px.3)

On March 8, Petitioner saw Dr. Hussein. He presented with a history of continued pain and stiffness in his bilateral hands, worse in the right index and left index fingers. The doctor diagnosed acute bilateral index finger triggering with tenosynovitis and progressive symptoms. (Px. 3).

He prescribed trigger finger releases for both index fingers. On March 14, 2024, the doctor issued work restrictions for the bilateral upper extremities of light duty, no lifting over two pounds, and to avoid repetition. (Px 3).

Petitioner's last visit with Dr. Hussein was on May 30, 2024. The doctor's evaluation noted tenderness of the left ring, middle, and small fingers and right index and small fingers.

The diagnosis was acute right index and small finger triggering with tenosynovitis and left index, middle, and small finger triggering with synovitis as well. Petitioner was prescribed home exercises, over-the-counter medications, was advised to ice and rest, elevate, elevation, compression, activity modification, and oral medications. (Px.3).

On August 15th, 2024, Petitioner saw Dr. Paul A. Papierski, of Chicago Hand and Orthopedic Surgery. Petitioner presented with a history of development of multiple trigger fingers in his bilateral hands. Worst were the middle and ring fingers bilaterally. It was noted Petitioner worked in a job where there was frequent grip activities. Petitioner further reported that after his surgeries, the left ring finger remains somewhat painful with gripping activities and with direct pressure. It was also noted that when he went back to work, he had additional worsening of symptoms of triggering and discomfort in the bilateral thumb and index fingers which persisted. The doctor's physical examination revealed thickening and tenderness of the left ring finger with mild limitation of full flexion of all fingers, but with good

extension. He further noted tenderness in nodules at the A1 pulleys of the bilateral thumb and index fingers. He diagnosed trigger finger of the left thumb, index and ring fingers, and of the right thumb and index finger. He felt Petitioner had problematic scar formation of the left ring finger and stenosing tenosynovitis in the bilateral thumb and index fingers. (Px 6)

He recommended an A1 pulley release and possible tenosynovectomy of the left thumb and index finger with revision of the left ring finger due to scar. The doctor further noted, "I would state that the type of activity this individual describes for work involves frequent gripping activities as a contribution to the development of multiple trigger fingers or stenosing tenosynovitis." He placed Petitioner on work restrictions of no lifting over five pounds with both hands. (Px 6)

Included in the Respondent's exhibits are three job activity notifications.

The first dated July 22, 2023, lists restrictions of, "occasional grip bilateral hands." The second dated October 26h, 2023, lists a return to work for full duty. The third dated February 6, 2024, lists restrictions of "bilateral hands, no lifting greater than two pounds, no repetitive activity." (Rx. 1).

Respondent's Exhibit # 2 is a termination notice dated March 5, 2024. The notice indicates that Petitioner was

terminated for absenteeism. The incident date is February 29, 2024. It is noted, "left for doctor appointment without telling supervisor."

Respondent's Exhibit # 3 is a Section 12 examination report dated May 15, 2024, by Dr. Michael V. Birman, of Hand to Shoulder Associates. He diagnosed right middle and ring trigger fingers, status post trigger finger releases; right index trigger finger; left middle and ring trigger fingers, status post trigger finger releases, and left index and small trigger fingers. He commented that work activities can be a factor in precipitating or aggravating trigger fingers when repetitive and sustained forceful gripping is done. He indicated that Petitioner's work activities could have been an aggravating factor for the middle and ring trigger fingers of both hands. He was unable to relate the index and small fingers because he felt there was a delay between the onset of symptoms in those fingers and Petitioner's forceful gripping work activities. (Rx 3).

He suspected that Petitioner may have a systemic condition causing the triggering of his digits. He indicated that it would be reasonable to perform surgery on the index and left small fingers, but would recommend a medical workup first. (Rx 3).

Respondent's Exhibit Number 7 is an October 16, 2023, evaluation report from Dr. Gregory Clem, of MOHA On-Site Physician Services. The doctor noted that the left hand was

significantly better and the right hand "is still healing and more tender than the left side." He felt that Petitioner could start a slow progression work hardening. He stated he sent a note to Physical Therapy to advise them to finish therapy. He stated that Petitioner should be considered at maximum medical improvement and had no functional limitations.

FINDINGS

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (C), THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds that the Petitioner sustained repetitive trauma injuries to both hands with a March 27, 2023 date of manifestation.

This conclusion is in part based upon the testimony of the Petitioner that he was employed by the Respondent in the "drop flanks" position from September, 2021 through March 27, 2023. His job duties required repetitive forceful gripping of a pick/hook in the left hand and a 12 inch knife in the right. He stabilized the beef carcass with the left hand using a hook and cut off sections of meat with the right hand. After performing these job duties, he began to notice pain and swelling in his hands.

On March 27, 2023, he sought treatment for his hands at the Respondent's plant medical clinic. He has received or sought treatment for his hands since that date.

Petitioner's Exhibit # 1 are the medical reports from the Respondent's medical clinic. Petitioner was seen there on March 27, 2023 complaining of bilateral hand discomfort and left hand swelling. The objective findings of the attending nurse included swelling to the fingers of the left hand and to the dorsal portion of the left hand with limited flexion of the left, middle and ring fingers with triggering of the left

middle finger. There was popping of the left long finger with a nodule and stiffness and pain of the right hand. The Petitioner related that his position was short a worker and that he "pulls for both many times throughout the day" and that "once last week he worked two to three hours solo." (Petitioner's Exhibit # 1, Page 9).

Petitioner was seen regularly for treatment to his hands through October 16, 2023 and then resumed treatment on February 5, 2024 and seeks treatment through the present.

"In short, courts considering various factors have typically set the manifestation date on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *Durand vs. Industrial Commission*, 862 NE 2d 918,929, 224 Ill 2d 53 (2006).

The above stated evidence supports a finding that the Petitioner's repetitive trauma injuries to his hands manifested on March 27, 2023, when he sought a course of treatment which has continued through the present.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (F), THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds that a causal connection exists between the condition of ill-being of the Petitioner's right and left hands and his employment duties with the Respondent.

This conclusion is based in part upon the testimony of the Petitioner whom the Arbitrator finds to be credible.

The Petitioner stated that he worked for the Respondent's meat processing facility in the "drop flanks" position eight hours per day, five to six days per week between October of 2021 and March 27, 2023. During this time he used a hook with the left hand to grab a beef carcass suspended from a conveyor line and used a 12 inch knife in the right hand to cut sections from the carcass. He then tossed the portions of meat that he cut onto a conveyor line. He used a tight grip on both implements. He performed this activity approximately 2,500 times per day. He began to notice pain and swelling in both hands and sought treatment at the Respondent's occupational medicine clinic on March 27, 2023 and commenced a course of treatment initially at the plant. He testified that he experienced pain in the hands including all of his fingers and thumbs. He was referred to Dr. Waqas Hussein who performed surgery on the middle and ring fingers of both hands. He was released for regular duty at Respondent's medical facility on October 16, 2023 and worked a position handling boxes of meat repetitively and developed more pain in his hands. He

returned to ORA Orthopedics and was placed back on work restrictions. He was terminated on March 1, 2024, because he missed work for a non-work related doctor visit. He was prescribed right and left index finger releases by Dr. Hussein on March 8, 2024. He was unable to have the surgery because of a lack of authorization.

He then sought treatment with Dr. Paul Papierski, who placed him on restrictions and prescribed further surgery. He has been unable to have the surgery performed because of a lack of insurance coverage.

The record establishes that the Petitioner performed repetitive, forceful gripping activities with both hands for a significant period of time in the course of his employment duties. Petitioner's un rebutted testimony was that he cut up approximately 2,500 beef carcasses per day between October of 2021 and March 27, 2023.

The job duties described by the Petitioner are a competent cause for the condition of ill-being of his hands. Dr. Papierski noted that Petitioner worked in a job with frequent gripping. He diagnosed triggering of the index finger and thumb of the right hand and triggering of the thumb, index and ring fingers of the left hand, status post trigger finger releases of the bilateral middle and ring fingers. The doctor commented in his office notes, "the type of activity that this individual describes for work involves frequent gripping activities as a contribution to the

development of multiple trigger fingers or stenosing tenosynovitis." (Px 4).

There is also a correlation between the onset of Petitioner's symptoms of pain and swelling of the hands and the performance of his repetitive work duties. He worked in the "drop flank" position where his symptoms started. His initial symptoms included pain and swelling in both hands including both thumbs and all fingers. In his initial treatment visit on March 27, 2023, it was noted his symptoms were to both hands. (Px. 1, Page 9). At that time he reported, "swelling to fingers of the left hand" and the dorsal portion of the left hand with stiffness and pain in the right hand. Triggering was noted in the left middle and ring fingers with a nodule of the left long finger.

The medical records reveal that the injuries to the tendons and soft tissues of Petitioner's hands commenced by March 27, 2023, as evidenced by his symptoms expressed as pain stiffness and swelling in his hands. This condition progressed to triggering of various digits in both hands through his last evaluation with Dr. Papierski on August 15, 2024.

Dr. Hussein did not express an opinion on causation in his office notes, but all of the health insurance claim forms submitted by his office indicate that the condition treated is related to the patient's employment. (Px. 3).

Respondent offered into evidence a Section 12 examination report by Dr. Michael Birman. His report stated that, "work activities can be a factor in precipitating or aggravating trigger fingers, when repetitive and sustained forceful gripping is done." Unquestionably, the Petitioner's job duties involve repetitive and forceful gripping. Dr. Birman commented that Petitioner's work activities could have been an aggravating factor for the middle and ring fingers of both hands. He did not relate triggering of the other digits and felt those likely had a systemic cause. No evidence was introduced however, that Petitioner suffers from any systemic condition, which would be a competent cause of causing trigger fingers.

Other than a note that Petitioner had some hypertension, the Petitioner is an otherwise healthy, relatively young individual. There is no evidence that he engaged in any activities of the hands that were repetitive or strenuous outside of work. Repetitive work activities are the only identifiable cause of the Petitioner's tendon injuries.

The Arbitrator finds that the record taken as a whole demonstrates that the Petitioner sustained repetitive trauma injuries to both hands caused by his employment duties with the Respondent, which manifested on March 27, 2023.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (J), THE ARBITRATOR FINDS THE FOLLOWING FACTS:

Having found for Petitioner on the disputed issues of accident and causal connection, the Arbitrator finds the Respondent liable for Petitioner's outstanding medical expenses incurred for treatment to his hands since March 27, 2023.

Given the clinical findings of Petitioner's medical providers consistent with triggering of the digits of both hands and Petitioner's other hand symptoms documented in the medical records, the Arbitrator finds that the following medical bills were reasonably required to cure or relieve the Petitioner from the effects of the repetitive trauma injuries:

Petitioner's Exhibit # 5,

ORA Orthopedics,	\$268.00

Petitioner's Exhibit # 6,

Chicago Hand & Orthopedic Surgery Center,	\$215.00

Respondent is liable for the above unpaid bills, which are to be calculated pursuant to Section 8(a) and 8.2 of the Workers' Compensation Act.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (K), THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Petitioner came under the care of Dr. Paul Papierski at Chicago Hand and Orthopedic Surgery Center. (Px. 4).

Petitioner saw Dr. Papierski on August 15, 2024 and reported the development of multiple trigger fingers in both hands, with pain in the palmar area of the left ring finger.

Dr. Papierski's examination findings included thickness and tenderness at the left ring finger. There was tenderness and nodules at the A1 pulleys of the bilateral thumb and index fingers.

The doctor felt that Petitioner had problematic scar formation at the left ring finger and stenosing tenosynovitis, throughout the bilateral thumb and index fingers. He recommended an A1 pulley release and possible tenosynovectomy, of the left thumb and index finger, with revision of the ring finger due to scar.

The Arbitrator finds that the procedures recommended by Dr. Papierski are reasonably required to cure or relieve the Petitioner from the effects of the repetitive trauma injuries that he has sustained while working for the Respondent.

The doctor's clinical findings support this conclusion.

The Arbitrator finds the Respondent shall authorize and pay for an A1 pulley release and possible tenosynovectomy of the left thumb and index finger, with revision of the left

ring finger, open trigger release and tenosynovectomy and all related care.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (L), THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Petitioner testified that he was terminated by the Respondent on March 1, 2024, for reaching the requisite point level after missing a day of work to attend a doctor's appointment. He has not been employed since then.

At the time of his termination and since then, he has been on work restrictions that preclude him from performing his usual and customary job duties.

Since March 27, 2023, Petitioner has received treatment for his hands and been diagnosed with triggering or tenosynovitis in multiple digits.

He was released for regular work on October 16, 2023, but returned to ORA Orthopedics on February 5, 2024, complaining of worsening stiffness in the right long and ring fingers and left ring finger after repetitive lifting of 100-pound boxes at work. He was seen by Dr. Hussein's physician's assistant, Daniel Nichols, at that time. He was diagnosed with recurrent flexor tenosynovitis. He was given corticosteroid injections and placed on restrictions, to avoid repetitive activity with no lifting over 2 pounds of the bilateral hands. (Px. 3).

On March 8, 2024, Petitioner saw Dr. Hussein. He complained of pain and stiffness in his bilateral hands, worse in the index fingers. The doctor noted bilateral index finger triggering with tenosynovitis and progressive symptoms. The doctor recommended index finger trigger releases on both hands. He provided a work note stating that Petitioner may return to work with restrictions "ongoing pre-occupational health." (Px.3).

The Petitioner testified that the surgery was never performed because of a lack of insurance coverage or authorization. (Tr. 21).

On March 14, 2024, Dr. Hussein issued a written restriction of "bilateral extremities, light duties, less than 2 pounds, avoid repetition." (Px 3).

Petitioner returned to Dr. Hussein on May 30, 2024, reporting continuing pain and triggering. Dr. Hussein diagnosed right index and small finger triggering with tenosynovitis and left index, middle, and small finger triggering with tenosynovitis. He recommended rest, elevation, compression, and activity modification for symptomatic pain control along with home physical therapy and over-the-counter medications. (Px 3).

On August 15, 2024, Petitioner visited Dr. Paul Papierski. The doctor noted triggering of both thumbs, index fingers, and the left ring finger. He prescribed surgery on the left ring finger due to scar tissue formation with

releases of the left thumb and index finger. He placed Petitioner on a 5-pound lifting restriction for both hands.

The Arbitrator finds that the Respondent is liable for payment of temporary total disability benefits for 38 and 5/7 weeks from March 1, 2024 through November 26, 2024, the date of the arbitration hearing.

The Petitioner has been prescribed surgery and is not at maximum medical improvement. His restrictions would preclude him from returning to his usual and customary employment duties. Furthermore, the Illinois Supreme Court has found that an employer's obligation to pay temporary total disability benefits to an injured employee does not cease because the employee was discharged whether or not the discharge was for cause. The determinative inquiry is whether or not the claimant's condition has stabilized. *Interstate Scaffolding vs. Illinois Workers' Compensation Commission*, 236 Ill. 2d, 132, 923 NE. 2d, 266, 276, (2010)

The Petitioner's condition still needs further treatment, has not stabilized and disables him from his regular duties.

IN SUPPORT OF THE ARBITRATOR'S DECISION RELATING TO (M), THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Petitioner's description of his job duties was unchallenged. Medical evidence revealed that the only reasonable cause of the Petitioner hand injuries is his work duties for the Respondent and that his injuries preclude him from returning. He is clearly not at maximum medical improvement, having been prescribed surgery during the period in dispute by Dr. Hussein and Dr. Papierski. The surgeries have not been performed due to a lack of insurance authorization.

Regarding causation, the Petitioner effectively established a connection exists between his work duties for the Respondent and the condition of ill-being in his hands. This connection was not rebutted by the opinion of Dr. Birman, Respondent's Section 12 examining physician, who stated he could not relate the condition of the index or small fingers, but did not effectively rule out the connection exists.

The doctor did have an opinion relating at least an aggravation of the bilateral long and ring fingers to Petitioner's work duties. Dr. Birman surmised Petitioner's trigger fingers of the index and small fingers were due to a systemic condition. There is no evidence that Petitioner suffers from any systemic condition that could cause trigger fingers.

The Respondent has set forth no viable theory of what could have caused Petitioner's trigger fingers other than his employment duties. The Petitioner's work activities are the only plausible explanation for the condition of the ill being of his hands.

Based upon the above, the Arbitrator finds that Respondent's refusal to pay temporary total disability benefits is unreasonable.

Petitioner's Exhibit # 7 is a March 15, 2024, Section 19(1) demand form to Respondent's attorney for TTD benefits.

Petitioner met the requirements of sending a written demand for benefits in order for Section 19(1) penalties to be awarded.

Respondent shall pay to the Petitioner as a penalty under Section 19(1), of the Act \$30.00 a day for 271 days from March 1, 2024 through November 26, 2024, totaling \$8,100.00.

Respondent shall further pay 50% of the TTD due of \$21,768.26, equaling \$10,884.13 as a penalty under Section 19(k) of the Act.

Respondent shall also pay attorney's fees of \$2,176.82, equaling 20% of the Section 19(k) penalties awarded as a penalty under Section 16 of the Workers' Compensation Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC021808
Case Name	INSURANCE COMPLIANCE v. USA WATER & FIRE RESTORATION DBA NATIONWIDE WATER AND FIRE RESTORATION LLC
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0467
Number of Pages of Decision	11
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	

DATE FILED: 11/20/2025

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
)
 COUNTY OF Cook)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ILLINOIS DEPARTMENT OF INSURANCE,
 INSURANCE COMPLIANCE DEPARTMENT,
 Petitioner,

Case # 23WC021808
 18INC00228

v.

Chicago, IL

USA WATER AND FIRE RESTORATION,
 INC., AND NICHOLAS PACELLA,
 INDIVIDUALLY AND AS OFFICER,
 Employers/Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents and their officers alleging violation of section 4(a) of the Illinois Workers' Compensation Act for failure to procure mandatory workers' compensation insurance. Petitioner alleges that Respondents knowingly and willfully lacked workers' compensation insurance for 145 days. A hearing was held before Commissioner Simonovich in Chicago, Illinois, on September 24, 2025. Proper and timely notice was provided to Respondents. Petitioner was represented by the Office of the Attorney General. Respondent Nicholas Pacella appeared *pro se* individually. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, \$500.00 per day for each of the 145 days from September 16, 2016, through November 3, 2016, July 15, 2017, through August 31, 2017, and October 1, 2017, through November 17, 2017, when Respondents did business and failed to provide coverage for their employees. Petitioner seeks a total award of \$72,500.00.

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondent USA Water & Fire Restoration, Inc., knowingly and willfully violated section 4(a) of the Act and section 9100.90 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the periods in question. As a result, Respondent USA Water & Fire Restoration, Inc., and its officer Tad Christensen, shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with section 4(d) of the Act. For the following reasons, the Commission assesses a civil penalty against Respondent USA Water & Fire Restoration, Inc., and against Tad Christensen, under

section 4 of the Act in the sum of \$72,500, that representing \$500 per day for each of the 145 days from September 16, 2016, through November 3, 2016, July 15, 2017, through August 31, 2017, and October 1, 2017, through November 17, 2017, when Respondent USA Water and Fire Restoration, Inc., did business and failed to provide coverage for their employees.

I. Findings of Fact

The State of Illinois, Department of Insurance, Insurance Compliance Department, initiated an insurance compliance investigation after the Injured Workers' Benefit Fund (IWBF) had been named as an additional party in the matter of *Rey David Villanueva v. Tad Christensen/Nicholas Pacella/USA Board Up & Glass Co/USA Water & Fire Restoration & IWBF* No. 17WC026230. The claimant in that case alleges a work-related accident arising out of and in the course of employment on August 30, 2017. The department's investigation determined that Respondent business was subject to the Worker's Compensation Act by virtue of section 3 of the Act and had failed to provide insurance coverage for its employees. The department further determined the Respondent business was not self-insured.

Antonio Smith, an Investigator for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing. He has been an investigator for the Compliance department for eight years and was personally familiar with the investigation in this case. Mr. Smith testified that USA Water & Fire Restoration, Inc., fell under the Workers' Compensation Act's automatic coverage provisions because it was in the business of rehabbing buildings that were burned or flooded with water and sold services to the public.

Mr. Smith identified Petitioner's Exhibit 3 as a Notice of Non-Compliance mailed to Nicholas Pacella, individually and as president, and Paige Christensen, individually and as manager, of USA Water & Fire Restoration dba Nationwide Water and Fire Restoration LLC [sic], and Tad Christensen, individually. The notice is dated November 3, 2022, and states that the Commission's records indicated that USA Water & Fire Restoration dba Nationwide Water and Fire Restoration LLC, Nicholas Pacella, Paige Christensen, and Tad Christensen were not in compliance with the requirements of section 4(a) for the period from January 17, 2014, through June 14, 2019. The notice includes a certificate indicating service by certified mail on November 3, 2022. Px 3.

Mr. Smith identified Petitioner's Exhibit 4 as a Request for Informal Conference to be held on December 13, 2022, mailed to Nicholas Pacella, individually and as president, and Paige Christensen, individually and as manager, of USA Water & Fire Restoration dba Nationwide Water and Fire Restoration LLC [sic], and Tad Christensen, individually. The notice states that the Commission's records indicated that USA Water & Fire Restoration dba Nationwide Water and Fire Restoration LLC, Nicholas Pacella, Paige Christensen, and Tad Christensen were not in compliance with the requirements of section 4(a) for the period from January 17, 2014, through June 14, 2019. The notice includes a certificate indicating service by certified mail on November 3, 2022. Px 4. Mr. Smith testified that no responding party appeared at the informal conference.

Mr. Smith identified Petitioner's Exhibit 5 as printouts of a Business Entity Search for Respondent USA Water & Fire Restoration, Inc., from the Illinois Secretary of State's office.

The printouts indicate that USA Water & Fire Restoration, Inc. was incorporated on January 17, 2014, and was dissolved on June 14, 2019. The printouts also indicate that Nicholas Pacella was the president of USA Water & Fire Restoration, Inc. and that no registered agent was listed. *Id.* It further indicates that USA Water & Fire Restoration, Inc. also used assumed names of USA Plumbing and Sewer, USA Board Up and Glass, and USA Board Up & Glass Company, Inc. Px 5. Mr. Smith testified that he obtained this document during the investigation he made of USA Water & Fire Restoration, Inc, and that it was a true and correct printout of information from the Illinois Secretary of State.

Mr. Smith testified that he also obtained certified documents related to USA Water & Fire Restoration, Inc. from the Illinois Secretary of State, which was identified as Petitioner's Exhibit 6. The documents received indicate that the company was incorporated on January 17, 2014, with Nicholas Pacella as the registered agent, with an address at 7223 S. Rte 83, Suite 308, Willowbrook, IL 60527. Px 6, p. 3. The corporation applied to adopt the assumed name of USA Board Up & Glass Company, Inc., on October 14, 2014. *Id.* at 10. The corporation filed an annual report in 2015 listing Tad Christiansen [*sic*] as the registered agent with an address at 4230 1st Ave, Lyons, IL 60534, and Nicholas Pacella as the president and director, giving the 7223 S. Rte 83 address. *Id.* at 5. The corporation filed annual reports for 2016 and 2017 naming Nicholas Pacella as president, secretary, and registered agent at the 4230 1st Ave address. *Id.* 6-8. The company applied to adopt the assumed corporate name of USA Plumbing and Sewer on January 22, 2017. *Id.* at 11. The company was dissolved on June 14, 2019, for failure to file an annual report and pay the annual franchise tax. *Id.* at 4.

On July 22, 2025, George Dysico ("Dysico"), an investigator for Insurance Compliance, attempted to personally serve Nicholas Pacella with a Notice of Insurance Compliance Hearing. Upon telephonic contact, Pacella communicated that his current residential address was in Florida and provided his current email address. On July 23, 2025, after investigation, Dysico served Respondent USA Water & Fire Restoration Services, Inc. via registered agent Tad Christensen by service upon his updated address. Px 2.

On August 27, 2025, Notices of Insurance Compliance Hearing for the September 24, 2025, hearing date were sent via certified mail to USA Water & Fire Restoration, Inc., c/o Tad Christensen and c/o Nicholas Pacella to their current addresses. The same date, notices were also sent to Nicholas Pacella via both certified mail and email. Px 1.

Mr. Smith further testified that Petitioner requested insurance information regarding the Respondents from the National Council of Compensation Insurance (NCCI) in Boca Raton, Florida. Px 7. The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers, and that its records regarding USA Water & Fire Restoration, Inc. DBA USA Board Up & Glass Co, of 4320 1st Avenue, Lyons, IL., with FEIN 47-1386284, did not show policy information showing proof of workers' compensation insurance at any time from January 17, 2014, through October 25, 2014, that a policy effective October 26, 2014 was cancelled effective March 5, 2015. No policy information was filed showing proof of workers' compensation insurance at any time from March 6, 2015, through February 16, 2016, and that a policy effective February 17, 2016, was cancelled effective September 15, 2016. No policy information was filed showing proof of

workers' compensation insurance at any time from September 16, 2016, through November 3, 2016. A policy was in effect from November 4, 2016, through February 17, 2017. A policy effective February 17, 2017, was cancelled effective July 14, 2017. No policy information was filed showing proof of workers' compensation insurance at any time from July 15, 2017, through November 17, 2017. A policy effective November 18, 2017, was cancelled effective April 4, 2018. An overlapping policy effective March 9, 2018, was cancelled effective August 1, 2018. An overlapping policy effective May 1, 2018, was cancelled effective October 13, 2018. No policy information was filed showing proof of workers' compensation insurance at any time from October 14, 2018, through April 16, 2019. A policy effective April 17, 2019, expired on its expiration date on April 17, 2020. No further policy information is shown. Px 7.

Mr. Smith further testified that Petitioner's Exhibit 8 was a certified finding from the Illinois Workers' Compensation Commission, Office of Self-Insurance, that no certificate of approval to self-insure was issued to Respondent USA Water & Fire Restoration, Inc., at 4230 1st Avenue, Lyons, for the period of January 17, 2014, through June 14, 2019. Px 8.

Mr. Smith further testified that in the regular course of his investigation, Petitioner requested information regarding Respondent USA Water & Fire Restoration, Inc., FEIN 47-1386284, from the Illinois Department of Revenue. Petitioner submitted Petitioner's Exhibit 9, comprised of certified records of the that department. Illinois Department of Revenue Records show that no Corporation Income and Replacement Tax Returns or forms were processed for reporting periods December 31, 2014, through December 31, 2016, and December 31, 2018, through December 31, 2019. Px 9 p 1. A return for reporting period December 31, 2017, was filed and shows Respondent USA Water & Fire Restoration, Inc. at the 4320 S. 1st address. The return was signed by Tad Christen [*sic*], as President, and dated May 9, 2018. Px 9 p 5.

Department of Revenue records further show that no quarterly Illinois Withholding Income Tax Returns were filed for reporting periods March 31, 2014, through December 31, 2015, or June 30, 2019. Px 9 p 6. Unsigned reports received from April 22, 2016, through April 22, 2019, show a business address at 80 Burr Ridge Parkway Suite 13, in Burr Ridge, IL 60527. Px 9 p. 7 – 29.

Mr. Smith further testified that in the regular course of his investigation, Petitioner requested information regarding Respondent USA Water & Fire Restoration, Inc., FEIN 47-1386284, from the Illinois Department of Employment Security. Petitioner submitted Exhibit 10 as certified records of Employer's Quarterly Wage Reports for USA Water & Fire Restoration, Inc., FEIN 47-1386284. Reports were included for the first quarter of 2016 through the second quarter of 2018 from the Department of Employment Security. Px 10. These records indicate that employees were reported from February 2016 through August 2017 and October 2017 through April 2018. *Id.* The company reported having zero employees in September 2017. *Id.* at 14.

Mr. Smith identified Petitioner's Exhibit 11 as printouts from the public case docket search of CompFile showing the case docket for pending case 17WC026230, *Rey David Villanueva v. Tad Christensen/Nicholas Pacella/USA Board Up & Glass Co/USA Water & Fire Restoration*. Px 11. Official commission records confirm that as of the date of hearing that case was still pending before the assigned Arbitrator.

Mr. Smith testified that based upon his investigation, Petitioner determined that Respondent USA Water & Fire Restoration, Inc. was required to provide workers' compensation insurance to its employees and that it did not have workers' compensation insurance for the period for which Petitioner requests relief, from September 16, 2016, through November 3, 2016; July 15, 2017, through August 31, 2017; and October 1, 2017 through November 17, 2017.

Respondent, Nicholas Pacella, testified at the hearing. He identified that he was born in 1992. He testified that he has no relationship to Respondent USA Water & Fire Restoration, Inc., and that he also did not work for the corporation. Tad Christensen, his former stepfather, was divorced from his stepmother in approximately 2011, and had fraudulently started multiple companies in Mr. Pacella's name after that time. He testified that Mr. Christensen had also started companies in his name in both 2012 and in 2016 without his knowledge or permission. Mr. Pacella previously sought legal help to resolve issues of identity theft. Mr. Christensen then sued Mr. Pacella for defamation, which was quickly dismissed. Mr. Christensen also attempted to legally change his name to Nicholas Pacella, which was not allowed. Mr. Christensen had previously been sent to prison for insurance fraud and various other schemes. Mr. Pacella was shown a copy of Petitioner's Exhibit 6 page 6, a handwritten signature labeled 'Nicholas Pacella President' from the 2016 annual report for the corporation and denied that it was his signature.

Nicholas Pacella testified that Mr. Christensen owned and operated USA Water & Fire Restoration, Inc., and that the company did water and fire restorations and insurance restoration in homes or properties.

The Commission takes judicial notice that Tad Christensen, Donna Christensen, and other persons unrelated to this matter were involved in insurance fraud under the corporate name of Action Fire Restoration, and that they were charged in 2005. The Commission also takes judicial notice that DuPage County case 2010D001720 was a dissolution of marriage of Donna L. Christensen and Tad Christensen. The Commission takes judicial notice that DuPage County case 2015MR000903 was the matter of name change for Tad Christensen to Petition for Change of Name to Nicholas Pacella. Other cases regarding charges against Mr. and Mrs. Christensen, their corporation, and their alleged co-conspirators, both civil and criminal, are publicly available in numerous court dockets, disciplinary orders, websites, and news articles.

The Petitioner informed the Commission before the start of trial that they did not seek any penalties against Nicholas Pacella but still sought them against USA Water & Fire Restoration, Inc. and its true president, Tad Christensen.

II. Conclusions of Law

The Commission first considers whether Respondents are subject to the Act. Pursuant to section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including "The erection, maintaining, removing, remodeling, altering or demolishing of any structure." 820 ILCS 305/3(1) (West 2004).

The Commission finds that Respondents' business falls within section 3(1) of the Act. This finding is based on Mr. Smith's and Mr. Pacella's testimonies that the company remodeled structures after damage by fire or water. Accordingly, the Commission finds that the work USA Water engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a) (West 2004). Section 9100.90(a) of the Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a) (1986). Section 9100.90(d)(3)(E) of the Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of the Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986).

The Commission analyzes here the culpability of Respondents and the applicability of section 4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of section 3 of the Act, and any other employer who shall elect coverage under section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to USA Water & Fire Restoration, Inc. for the period of January 17, 2014, through June 14, 2019.

Petitioner also submitted the NCCI certification that USA Water & Fire Restoration, Inc., did not file policy information showing proof of workers' compensation insurance at any time from January 17, 2014, through October 25, 2014; March 6, 2015, through February 16, 2016; September 16, 2016, through November 3, 2017; July 15, 2017, through November 17, 2017; or October 14, 2018, through April 16, 2019.

Finally, Petitioner submitted records of the Illinois Department of Employment Security that show that USA Water & Fire Restoration, Inc., reported having employees from February 2016 through August 2017 and October 2017 through April 2018. *Id.* The company reported having zero employees in September 2017. *Id.* at 14.

Mr. Smith testified that based upon his investigation, Petitioner determined that Respondents did not provide workers' compensation insurance for the period for which it requested relief, from September 16, 2016, through November 3, 2016; July 15, 2017, through August 31, 2017; or October 1, 2017, through November 17, 2017.

Respondent Nicholas Pacella attended the hearing and credibly testified that he was not an officer of Respondent USA Water & Fire Restoration, Inc., and that his name and identity had been used fraudulently to incorporate that business. The Commission, considering the information made available for judicial notice under Rule of Evidence 201, finds Mr. Pacella credible. The Commission applies that information only to the credibility of Mr. Pacella. The Commission finds that no party has shown by a preponderance of the evidence that Mr. Pacella was an officer or agent of USA Water & Fire Restoration, Inc. As above, this was consistent with Petitioner's stipulation at the commencement of the hearing.

As Mr. Pacella was present in his personal capacity, the Commission must consider the notice to Respondent USA Water & Fire Restoration, Inc. The Rules of Practice before the Commission govern the notice requirements of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c) (1986). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d) (1986). Because USA Water & Fire Restoration, Inc., was a corporation, the Business Corporation Act (805 ILCS 5) governs service. Further, the corporation had been dissolved as of June 14, 2019, and so the Commission must consider the requirements of the Business Corporation Act concerning dissolved corporations.

Section 5/5.05 of the Business Corporation Act specifies that the agent of a dissolved corporation remains their agent for service of process for 5 years unless the agent resigns or properly reports a change. Such process may be made on all actions which are "instituted" against a dissolved corporation within 5 years of the dissolution. *Barajas v. BCN Tech. Servs.*, 2023 IL App (3d) 220178, ¶ 40, 471 Ill. Dec. 65, 73, 228 N.E.3d 245, 253 (2023). According to Commission records, the instant matter was instituted on August 22, 2023, naming USA Water & Fire Restoration, Inc, within the five years after dissolution on June 14, 2019.

According to Petitioner's Exhibit 2, investigator Dysico delivered a copy of the Notice of Insurance Compliance Hearing to Tad Christensen on July 23, 2025. The investigator completed the requisite affidavit of service and provided a photo of the envelope delivered. Px 2. A second notice, providing a Notice of Insurance Compliance Hearing for the specific date of September 24, 2025, was sent by Petitioner's counsel Megan Murphy on August 27, 2025, by certified mail to Respondent USA Water & Fire Restoration, Inc., c/o Tad Christensen at the address where he had been served. The requisite certification by counsel was provided. Px 1.

The Commission considers the issues of notice and due process and finds that Respondent USA Water & Fire Restoration, Inc., and Tad Christensen were provided notice of the case and notice of the specific date of the hearing by personal service and by outbound certified mail. The Commission has considered its own rules and Petitioner's due process obligations to take reasonable measures to update the address when the agent has moved. See *Barker v. People (In re Forfeiture of \$ 2,354.00 United States Currency)*, 326 Ill. App. 3d 9, 14, 760 N.E.2d 565, 569 (2nd Dist. 2001). The Commission finds that Petitioner met their obligation of updating the notices and address of Tad Christensen personally and as agent by their service at

his home. The requirements of service and due process were met, and Respondents were provided opportunity to be heard.

Despite being adequately noticed, neither Tad Christensen nor USA Water & Fire Restoration, Inc., attended the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during the periods requested. Accordingly, the Commission concludes that Petitioner proved that Respondent USA Water & Fire Restoration, Inc. failed to comply with the legal obligations imposed by section 4(a) of the Act from September 16, 2016, through November 3, 2016; July 15, 2017, through August 31, 2017; and October 1, 2017, through November 17, 2017.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, section 4(d) of the Act states:

“Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this section ***, the Commission may assess a civil penalty of up to \$500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this section shall be the sum of \$10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this section shall be liable for the unpaid penalty or any unpaid portion of the penalty.”

820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after reasonable notice and hearing. As above, the Commission finds notice was provided consistent with the rules and due process.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. *See, e.g., State of Illinois v. Murphy Container Service*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondent violated the Act by failing to obtain workers' compensation insurance was significant. Respondent USA Water & Fire Restoration, Inc., failed to have insurance for 145 days, from September 16, 2016, through November 3, 2016; July 15, 2017, through August 31, 2017; and October 1, 2017, through November 17, 2017. There is one pending workers' compensation claim against USA Water & Fire Restoration, Inc., for date of accident August 30, 2017. IDES records show that USA Water & Fire Restoration, Inc., employed up to six employees. Moreover, having reviewed the record, the Commission finds no evidence as to USA Water & Fire Restoration, Inc., inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances. In mitigation, it appears that USA Water & Fire Restoration, Inc., had policies on various dates and the violation was not continuous.

The Commission concludes that Respondents USA Water & Fire Restoration Inc, and its officer, Tad Christensen, knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of \$72,500.00 against Respondents, USA Water & Fire Restoration, Inc. and Tad Christensen, individually as an officer of USA Water & Fire Restoration, Inc., that being \$500 per day for the period of 145 days between September 16, 2016, through November 3, 2016; July 15, 2017, through August 31, 2017; and October 1, 2017, through November 17, 2017.

The Commission declines to find Respondent Nicholas Pacella liable in any capacity.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, USA Water & Fire Restoration, Inc. and Tad Christensen, individually and as officer of USA Water & Fire Restoration, Inc. pay to the Illinois Workers' Compensation Commission the sum of \$72,500.00 pursuant to section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Workers' Compensation Commission
Fiscal Department
69 W. Washington Street, Suite 900
Chicago, Illinois 60602

This decision may be judicially reviewed only as described in section 19(f). This decision may be enforced in the same manner as a judgment entered by a court of competent jurisdiction and is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court. Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in

the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 20, 2025

H: 09/24/25

AHS/pcs

051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC023386
Case Name	Javar Cecil v. HCR Manorcare
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0468
Number of Pages of Decision	17
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Peter Vlantis
Respondent Attorney	Logan March

DATE FILED: 11/21/2025

/s/Carolyn Doherty, Commissioner

Signature

19 WC 023386

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF LAKE)

☒ 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAVAR CECIL, as Independent
 Administrator of the Estate of
 LAUREN SIMONIS, Deceased,

Petitioner,

vs.

NO: 19 WC 023386

HCR MANOR CARE,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 28, 2025 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.

19 WC 023386

Page 2

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 \$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.

November 21, 2025

O: 11/19/25

CMD/jjm

045

s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

/s/ Frank J. Soto

Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	19WC023386
Case Name	Javar Cecil v. HCR Manorcare
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Peter Vlantis
Respondent Attorney	Daniel Flores

DATE FILED: 4/28/2025

/s/ Michael Glaub, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 22, 2025 4.05%

STATE OF ILLINOIS)
)SS.
 COUNTY OF Lake)

☐	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**

Javar Cecil Independent Admin of Estate of Lauren Simonis Case # **19** WC **23386**

Employee/Petitioner

v.

Consolidated cases: _____

HCR Manor Care

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 **Michael Glaub**, Arbitrator of the Commission, in the city of **Waukegan**, on **02/25/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **07/27/2019**, 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 **\$5,23011**; the average weekly wage was **\$1,927.04**.

On the date of accident, Petitioner was **35** 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**.

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

ORDER

Respondent shall pay Petitioner directly for the following outstanding medical services, pursuant to the Illinois Medical Fee Schedule and Sections 8(a) and 8.2 of the Act: NCH – Northwest Community Hospital (\$3,078.84); Illinois Bone and Joint (\$2,666.62); Hinsdale Orthopaedics (\$36,730.00); Adventist LaGrange Memorial Hospital (\$12,845.56)

Respondent shall pay Petitioner temporary total disability benefits of \$1,284.69 per week for 44 and 1/7th weeks, commencing 07/28/19 through 06/01/2020, as provided in Section 8(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.

Michael Glaub
Signature of Arbitrator

April 28, 2025

FINDINGS OF FACT

Lauren Simonis the Decedent passed away on June 1, 2020, for issues unrelated to her work accident and Javar Cecil, the Independent Administrator of her Estate, filed an Amended Application for Adjustment of Claim. This matter proceeded to hearing on February 25, 2025, in Waukegan Illinois before Arbitrator Michael Glaub. Disputed issues were accident, casual connection, unpaid medical bills, and temporary total disability “TTD” benefits. (Arbitrator’s Exhibit “AX 1).

The parties stipulated that at the time of the alleged accident of July 27, 2019, the parties were operating under the Act, and their relationship was one of employee and employer. *Id.* The parties further stipulated that proper notice was given, the average weekly wage “AWW” was \$1,927.04, the Decedent (Simonis) was thirty-five (35) years old, single, with two (2) dependent children. *Id.* Petitioner stipulated that since the Decedent Simonis passed away prior to reaching Maximum Medical Improvement “MMI” permanency benefits was not being sought. *Id.*

Testimony of Raymond Wachnik

Petitioner called Raymond Wachnik who was the Decedent’s (Simonis) long term domestic partner. Mr. Wachnik testified that he first met the Simonis in 2000 while they were both in college. (Arbitration Transcript “T”) (T9). They had one child together that they co-parented throughout the years. *Id.* In 2019, they got back together and the Decedent would stay over his house five or six nights a week. (T10).

Wachnik testified that from early 2019 through her work accident, the Simonis did not have any left knee issues, any injuries, nor did she have any difficulty walking. (T11). She never complained of any pain, had no prior accidents, and did not have any issues walking up or down stairs. (T12).

Wachnik was aware of Decedent's work schedule with Respondent and testified that she would often work double shifts from 7:30am to 11:30pm. (T13). He was with her the morning of July 27, 2019, before she left for work, and she was completely fine. *Id.* Wachnik was home when she returned and he noticed her limping and complaining of severe pain in her left knee. *Id.* She told him that she injured herself lifting a heavy patient. (T19).

Wachnik testified that he would drive her to her medical appointments and was present in the room when she spoke to the various doctors. (T15). He testified that Simonis would consistently tell her doctors that she injured her left knee while making a twisting motion as she was moving a heavy patient. (T17). She immediately felt pain after this movement. *Id.*

Wachnik testified that Simonis underwent conservative treatment and ultimately had a knee surgery in December 2019. (T18). She never fully healed and never returned to work with Respondent prior to her death. *Id.*

Testimony of Theresa Rosado

Respondent called Theresa Rosado who testified via evidence deposition. Her transcript was admitted into evidence without objection as Respondent's "RX" Exhibit 1. Ms. Rosado testified that she was Respondent's Human Resources Director from 2018 through 2022. (RX1, Pg. 5, lines 15-17). She also processed payroll and was responsible for new hires (RX1, Pg. 6, lines 4-9).

Ms. Rosado testified that she interviewed the Decedent (Simonis) at the end of 2018 and hired her to start working in 2019. (RX1, Pg. 7, lines 18-24; Pg. 8, lines 1-2). She testified that during this interview Simonis told her that in the summer of 2018 she had fallen off her bicycle (RX1, Pg. 9, lines 8-16; Pg. 10, lines 11-13).

Ms. Rosado testified she did not know the nature and extent of any injury suffered by the Decedent during that bicycle accident (RX1, Pg. 14, lines 21-23). Rosado testified that she did not know which knee may have been injured in that accident (RX1, Pg 10, lines 11-13). She also testified that nothing about that bicycle accident would have prevented the Decedent from being hired for the job. (RX1, Pg. 15, lines 9-14). She further testified that the bicycle accident happened one year prior to the July 27, 2019, work accident. (RX1, Pg.15, lines 15-18).

Ms. Rosado testified that Simonis would have needed full duty clearance prior to being hired in order to perform her job duties and the Decedent did not have any restrictions that would have prevented her from performing her job duties on July 27, 2019. (RX1, Pg. 17, lines 16-24; Pg. 18, lines 1-2).

Ms. Rosado testified that it was common for nurses like Simonis to assist in transferring patients from their bed to a chairside commode. (RX1, Pg. 21, lines 3-8). She also testified that the Simonis would not be able to perform that task with a knee injury. (RX1, Pg. 20, lines 13-15).

Ms. Rosado learned about the work accident on the Monday following the work accident. (RX1, Pg. 19, lines 17-22). She also testified that Simonis had worked for two to three weeks prior to her work accident. (RX1, Pg. 22, lines 18-23). She also testified that in the week prior to her accident, Simonis had worked approximately 79 hours without any issues. (RX1, Pg. 24, lines 21-24; Pg. 25, lines 1-7. Ms. Rosado agreed that if Simonis had any disability or restrictions she would not be able to work those hours in one week. (RX1, Pg. 25, lines 8-13).

Medical Treatment and Records

The Decedent's medical records were admitted into evidence without objection and corroborate the testimony of Mr. Wachnik and Ms. Rosado. Specifically, on July 28, 2019, the Decedent (Simonis) presented to the Northwest Community Hospital emergency department with complaints of left knee pain from work the previous night performing lifting/bending activities. (Petitioner Exhibit "PX" 2, Page 9). She was discharged with medication, knee immobilizer, crutches, and instructions to remain non-weight bearing and follow up with orthopedics. (PX2, Pg. 12-13).

On July 29, 2019, Simonis was evaluated by Dr. David Breslow at Illinois Bone & Joint. (PX3, Pg. 17). She again reported that she was injured at work and that she had no prior knee complaints. *Id.* Dr. Breslow noted diffuse tenderness and decreased range of motion. *Id.* Dr. Breslow suspected a meniscus tear and ordered an MRI, administered an injection, and gave her an off work note. (PX3, Pg. 18).

On July 31, 2019, an MRI was performed which revealed a meniscus tear. (PX3, Pg. 20). The Decedent returned to Dr. Breslow on August 02, 2019, where he recommended that she begin physical therapy. (PX3, Pg. 14). On August 19, 2019, Simonis returned to Dr. Breslow who again noted possible meniscus tear, stiffness, decreased range of motion, and pain. (PX3, Pg. 11-12). He indicated that the physical therapy he prescribed had not been approved by Worker's Compensation and he wrote her a script for pain mediation and kept her off work. *Id.* He also referred her to pain management. *Id.* Simonis was authorized to be off work by Dr. Breslow until September 16, 2019. (PX3, Pg. 25).

On August 30, 2019, Simonis presented to Dr. Eric Chehab, MD, at Illinois Bone and Joint. (PX3, Pg. 8-9). She presented with complaints of knee pain from a work accident. *Id.* She

told Dr. Chehab that “she was transferring a patient, pivoted and had pain.” *Id.* Dr. Chehab noted tenderness and limited range of motion and prescribed pain medication. *Id.*

On September 18, 2019, Simonis sought a second opinion from Dr. Steven Chudik at Hinsdale Orthopaedics. (PX4). She filled out an intake form where she described an onset of injury after work accident on July 27, 2019. (PX4, Pg. 6). She described the accident as happening after transferring a patient from a bed to a bedside commode. *Id.* Dr. Chudik suspected a medial meniscus tear. (PX 4, Pg. 10-13). He recommended continued physical therapy, and that she should remain off work pending further evaluation. *Id.*

Simonis treated with Dr. Chudik again on October 09, 2019, and October 25, 2019, with continued complaints of left knee pain and difficulty with ambulation. (PX4, Pg. 15 -21). Dr. Chudik continued to keep her off work and administered a second injection in her knee. *Id.*

On November 8, 2019, Simonis followed up with Dr. Chudik’s physician assistant Jessica Price and stated that the injection did not provide any relief and that her knee still swells and is painful. (PX4; Pg. 22-24). She was again kept off work. *Id.* On December 1, 2019, Dr. Chudik recommended a knee arthroscopy which was performed on December 17, 2019, at Adventist La Grange Hospital. (PX4, page 25-37; PX6). The operative report confirms a left articular cartilage tear. *Id.* Dr. Chudik performed a fat pad excision, chondroplasty, and synovectomy. *Id.*

Simonis followed up with Dr. Chudik post-operatively through April 1, 2020, where he continued to note the Decedent had ongoing left knee pain. (PX4, Page 45 – 67). He kept her off work during this time. (*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/her evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253 (1980); *Hosteny v. Workers' Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009).

Credibility Findings: In the case at hand, the Arbitrator finds that both Raymond Wachnik and Theresa Rosado testified credibly and consistently with each other and the medical evidence that was admitted. Both testified that prior to the July 27, 2019, work accident, the Decedent (Simonis) did not have any restrictions, limitations, or injuries, that would have prevented her from fulfilling her job duties as a registered nurse.

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

The Arbitrator finds that the Petitioner has proven that the Decedent (Simonis) sustained an accidental injury on July 27, 2019, which arose out of and in the course of her employment as a registered nurse with Respondent, HCR ManorCare.

Mr. Wachnik testified that on the morning of Saturday, July 27, 2019, Simonis left their home for work and did not have any injuries. She was not limping and she was not in distress. Ms. Rosado also testified that there was nothing preventing the Decedent from performing her job duties that day.

Mr. Wachnik testified that when Simonis returned home that evening after work, she was limping and in visible pain. Simonis told him that she hurt herself at work while transferring a heavy patient. Ms. Rosado also testified that she learned about this accident that following Monday, two days after the incident. Simonis also sought immediate medical attention the following morning at the emergency room of Northwest Community Hospital.

Although there was some testimony by Ms. Rosado that Simonis may have suffered an injury in a prior bicycle accident, there was nothing in the record to establish: (1) any details regarding that injury; (2) which knee, if any, was injured in that accident; and (3) what treatment, if any, was rendered for that accident. Moreover, the record clearly establishes that the bicycle accident in question was over one year prior to the July 27, 2019, work accident, and that Simonis had worked approximately 80-hours the week of the injury without limitations. Moreover, Mr. Wachnik testified that he and Simonis were together starting in early 2019 and that she was never injured in any way and did not have any issues with her left knee.

Simonis was consistent with her history of events. She told each and every medical provider that she got hurt at work on July 27, 2019. The emergency room record narrative indicates that she stated she got injured while performing lifting/bending at work. The narrative report from the first visit with Dr. Breslow describes an injury occurring from working long hours. Mr. Wachnik testified that he was with Simonis at this visit, and he heard her tell Dr. Breslow that she was injured while transferring a patient.

Finally, the Respondent did not present any witnesses or evidence to the contrary. Therefore, the Arbitrator finds that the Petitioner has proven that the Decedent Simonis sustained an accidental injury on July 27, 2019, which arose out of and in the course of her employment as a registered nurse with Respondent, HCR ManorCare.

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

The Arbitrator finds that the Decedent's (Simonis) condition of ill-being was causally related to the July 27, 2019, accident. The Arbitrator finds that the Petitioner established a causal connection through a consistent chain of events supported by credible testimony and medical evidence.

The Arbitrator finds that the injury occurred during the performance of a job-related task and is therefore compensable under the Act. Where an employee with no prior restrictions sustains an injury immediately following the performance of a physical task at work, the Commission may infer that the injury arose out of and in the course of employment. *Navistar Int'l Transp. Co. v. Indus. Comm'n*, 315 Ill. App. 3d 1197, (2000). In *Navistar*, the court stated that "proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury." *Id.* At 1205. The claimant in *Navistar* had no complaints before the accident but began to suffer from back pain following a physical incident at work involving a crowbar. *Id.*

Simonis was in good health prior to July 27, 2019, with no restrictions and no complaints. She experienced a sudden change in condition immediately after performing her job task of transferring a patient from a bed to chairside commode. She had an immediate chain of events, specifically, (1) injury, (2) emergency room, (3) conservative treatment, (4) injections, and (5)

surgery. The unbroken chain of events, from work incident to symptoms, to surgery, is sufficient to support a causal connection of her injury. This is also supported by the medical history and specifically Dr. Chudik opinion that her left knee injury “resulted from an injury at work.” (PX 4, Pg. 10).

The Arbitrator finds that the alleged bicycle accident that occurred in the summer of 2018 has no relevance to the July 27, 2019, accident. The Arbitrator also finds that any injuries related to that accident were not proven by the Respondent. The Arbitrator also finds that if in fact Simonis had suffered any injuries in that accident they were fully resolved and unrelated to her present condition of ill-being.

There is no evidence in the record indicating that Simonis had any pre-existing condition affecting her left knee prior to the injury on July 27, 2019. All the medical records corroborate that Simonis did not have any prior medical conditions. Mr. Wachnik testified credibly that Simonis never received treatment for anything related to her left knee. Similarly, all the medical records confirm that Simonis’ left knee injury was a new complaint arising from a work-related incident. (PX2, PX3, PX4).

Both Mr. Wachnik and Ms. Rosado testified that throughout 2019, Simonis did not have any injuries. Ms. Rosado also testified that Simonis would not have been hired if she could not perform her work without restrictions. Ms. Rosado also testified that prior to the July 27, 2019, work accident, Simonis did not have any conditions that would have prevented her from attending to her job duties.

Accordingly, the Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that the Decedent’s current condition of ill-being is causally related to the work accident of July 27, 2019.

WITH RESPECT TO ISSUE (J), WERE THE MEDICAL SERVICES PROVIDED TO THE DECEDENT WERE REASONABLE AND NECESSARY, THE ARBITRATOR FINDS AS FOLLOWS:

Under Section 8(a) of the Act, an employer is required to pay for all medical treatment that is reasonably required to cure or relieve the effects of the injury. The Arbitrator finds that the medical treatment rendered to the Decedent (Simonis) was reasonable and necessary. The records demonstrate a clear and uninterrupted course of treatment beginning immediately after the injury. All the treatment Simonis underwent was recommended by her medical doctors to treat her work-related injury. The surgical intervention performed by Dr. Chudik was medically necessary following unsuccessful conservative care, and no evidence suggests over-treatment or deviation from standard protocols.

There is no indication that any of the medical care was excessive or unrelated to the work injury. Treatment records show a continuous, coherent plan of care stemming from the initial emergency room visit through to the surgery and post-operative therapy. The Respondent did not offer into evidence any utilization reviews nor were contradictory medical opinions presented.

Therefore, the Arbitrator finds that all the medical bills are also reasonable and necessary, and awards the following medical bills pursuant to the Illinois Medical Fee Schedule:

1. NCH – Northwest Community Hospital - \$3,078.84 (PX2)
2. Illinois Bone and Joint - \$2,666.62 (PX3)
3. Hinsdale Orthopaedics - \$36,730.00 (PX5)
4. Adventist LaGrange Memorial Hospital - \$12,845.56 (PX7)

The Arbitrator finds that these sums can be reduced pursuant to the Fee Schedule and shall be paid directly to the Petitioner. If any of the medical bills listed above were already paid by the respondent, the respondent is entitled to credit for same.

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

The Arbitrator finds that the Decedent (Simoni) was medically unable to return to work from July 28, 2019, through June 1, 2020. Medical documentation from Dr. Breslow and Dr. Chudik, along with corresponding off work notes contained in the medical records support a finding of continuous work restrictions and off-work status throughout that time. (PX3, PX4).

Section 8(b) of the Act entitles an employee to temporary total disability (TTD) benefits during any period in which they are temporarily unable to perform the duties of their employment due to a work-related injury. In *ArcelorMittal Steel v. Illinois Workers' Comp. Comm'n*, the court upheld an award of TTD where the claimant “proved he sustained injuries arising out of and in the course of his employment,” and the Commission found that he remained under medical care and treatment during the recovery period. *Arcelor Mittal Steel v. Ill. Workers' Comp. Comm'n*, 2011 IL App (1st) 102180WC, 356 Ill. Dec. 418, 420, 961 N.E.2d 807, 809.

Respondent did not offer any evidence to dispute the Decedent's off work status and has not submitted any records showing that any TTD benefits were paid. Accordingly the Arbitrator awards TTD benefits for the period of 07/28/2019 to 06/01/2020, representing 44 and 1/7th weeks in the amount of \$1,284.69 per week for a total of \$56,709.88 in TTD.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC031722
Case Name	Javier Suarez v. Waukegan School District #60
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0469
Number of Pages of Decision	11
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Jack Linn
Respondent Attorney	Micaela Cassidy

DATE FILED: 11/24/2025

/s/Frank Soto, Commissioner

Signature

23 WC 31722

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF LAKE)

☒ 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JAVIER SUAREZ,

Petitioner,

vs.

NO: 23 WC 31722

WAUGEKAN SCHOOL DISTRICT,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 3, 2025 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.

23 WC 31722

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

November 24, 2025

FJS/dw

O-10/8/25

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/s/ Frank J. Soto

Frank J. Soto

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC031722
Case Name	Javier Suarez v. Waukegan School District #60
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Jack Linn
Respondent Attorney	Micaela Cassidy

DATE FILED: 3/3/2025

/s/ Gerald Napleton, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 25, 2025 4.18%

STATE OF ILLINOIS)
)SS.
 COUNTY OF Lake)

☐	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**

Javier Suarez

Employee/Petitioner

v.

Waukegan School Dist. #60

Employer/Respondent

Case # **23** WC **031722**

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 Napleton**, Arbitrator of the Commission, in the city of **Waukegan**, on **October 22, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is the 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 **3/10/2023**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$91,014.56**; the average weekly wage was **\$1,750.28**.

On the date of accident, Petitioner was **48** years of age, *single* with **0** dependent children.

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

Respondent shall be given a credit of **\$35,838.35** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$35,838.35**.

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

ORDER

Respondent shall authorize and pay for the shoulder and knee surgeries prescribed by Dr. Hamming as provided in Section 8(a) of the Act.

Respondent shall pay for the unpaid medical bills for the reasonably related medical treatment to Petitioner's shoulder and knee as contained in Petitioner's Exhibit 1 pursuant to Sections 8(a) and 8.2 of the Act.

The Respondent shall pay temporary total disability benefits for 30-5/7 weeks at \$1,166.85/week (\$35,838.35). Respondent is entitled to a credit for TTD benefits paid in the same amount.

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

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

/s/ Gerald W. Nippon

Signature of Arbitrator

February 28, 2025

RIDER TO ARBITRATION DECISION

JAVIER M. SUAREZ V. WAUKEGAN SCHOOL DISTRICT #60 – 23WC031722

FINDINGS OF FACT:

The Petitioner, a 48 year old painter and maintenance worker with a high school education, began his employment with Waukegan School District #60 in 2015. The Petitioner's job duties involved painting classrooms, hallways, and bathrooms in the Respondent's facilities. On March 10, 2023 the Petitioner sustained an undisputed work accident when he slipped and fell in the hallway while entering Glenwood Elementary School, landing on his right knee and right shoulder (Petitioner's Exhibit 5). The Petitioner testified that the hallway floor was wet as it was snowing outside, and he was carrying his work tools.

The Petitioner testified that after the fall he felt immediate pain in his right shoulder and knee, and immediately reported the accident to his supervisor, Tony Christian. The Petitioner filled out an accident report the same day which indicated that injured his right shoulder and right knee when he fell on the wet floor (PX 5).

The Petitioner testified that prior to the date of the work injury he had never injured his right shoulder nor had any right shoulder treatment. He further testified that in November of 2022 he saw his primary care doctor, Dr. Olinger, for right knee pain due to bumping it. The Petitioner testified that he only had one visit for this, and he required no further treatment. The Petitioner continued to work full duty and was asymptomatic up through the date of the work injury.

The Petitioner testified that although he reported the work injury on the date it occurred (March 10, 2023) he did not immediately seek treatment for his right shoulder and right knee because he was hoping it would get better. The Petitioner testified that he went to a family wedding in Mexico at the end of March 2023 because he was committed to go and had already purchased the tickets. He testified that he continued to have symptoms and took painkillers while on the trip.

The Petitioner testified that back at work in April 2023 he continued to have symptoms in his right knee and right shoulder. He notified his supervisor that his symptoms had not improved since the work injury, and he was sent by the Respondent for treatment for his work-related injuries at PromptMed Urgent Care.

The Petitioner was first seen at PromptMed Urgent Care on April 6, 2023. The office note reflects that the Petitioner had "persistent pain in right shoulder after slip and fall" on March 10, 2023. The Petitioner had a follow up visit with PromptMed on April 10, 2023 where he was given work restrictions of no use of the right arm and was referred to an orthopedic specialist, Dr. Mark Hamming (PX 2). As a result of the work restrictions not being accommodated the

Petitioner was off work beginning April 13, 2023; he began to receive temporary total disability benefits as of that date.

The Petitioner saw Dr. Hamming on April 18, 2023 and gave a history that he slipped and fell while walking into the school and “landed on his right shoulder and right knee” (PX 4). Dr. Hamming prescribed Meloxicam and ordered an MRI of the right shoulder which was performed on May 5, 2023 which revealed a high-grade partial thickness tear of the rotator cuff. At the Petitioner’s May 10, 2023 office visit, Dr. Hamming diagnosed the Petitioner with a right shoulder rotator cuff tear, AC sprain, and biceps tendinitis. Dr. Hamming prescribed a course of physical therapy although he did discuss with the Petitioner the possibility of surgery in the future (PX 4).

The Petitioner returned to Dr. Hamming on May 16, 2023. Dr. Hamming noted that the Petitioner’s right knee pain continued to worsen. Dr. Hamming noted that the Petitioner did have one doctor visit for his right knee a year prior, but did not require any further treatment inasmuch as the Petitioner testified he was asymptomatic (PX 4).

Dr. Hamming ordered an MRI of the right knee, which was performed on May 23, 2023. Following the MRI, the Petitioner followed up with Dr. Hamming on May 24, 2023 and was diagnosed with patellar tendinitis with likely meniscal tear. Dr. Hamming prescribed a course of physical therapy for the right knee (PX 4).

The Petitioner testified that he continued to follow up with Dr. Hamming monthly at that point. He was off work, receiving temporary total disability, and undergoing physical therapy for the right knee and right shoulder. The Petitioner testified that Dr. Hamming prescribed him Diclofenac gel and Naproxen for his ongoing symptoms.

At the Petitioner’s July 21, 2023 office visit, Dr. Hamming administered a cortisone injection into the Petitioner’s right shoulder (PX 4). He returned to Dr. Hamming on August 15, 2023. Dr. Hamming noted that the Petitioner’s right knee had not improved over the course of physical therapy, and the Petitioner was still experiencing pain. Dr. Hamming prescribed corrective surgery on the Petitioner’s right knee consisting of an arthroscopy with partial medial meniscectomy (PX 4).

The Petitioner followed up with Dr. Hamming for the right shoulder on October 10, 2023. Dr. Hamming noted that the Petitioner had been in therapy for about four months, and although he was improving, he still had difficulty with heavy and repetitive lifting and was experiencing soreness with activity. Dr. Hamming prescribed four more weeks of therapy but stated if the Petitioner did not make further progress he would prescribe right shoulder surgery (PX 4).

Following the therapy, the Petitioner returned to Dr. Hamming on November 7, 2023. Dr. Hamming stated that the Petitioner had been in physical therapy for six months, had tried a cortisone injection, and was not improving. Dr. Hamming prescribed corrective surgery on the Petitioner’s right shoulder and maintained the Petitioner’s work restrictions (PX 4).

The Petitioner was sent by the Respondent for a Section 12 evaluation with Dr. Jay Levin on November 1, 2023. Dr. Levin's report notes that "On March 10, 2023, [the Petitioner] was at work in the hallway of the school carrying items in both of his hands. It was a snowy day and his shoes were slippery/wet which caused him to slip and fall down on the ground. He hit his right shoulder and right knee directly onto the ground as he fell to his right side. He could not brace for the fall as he had items in both hands" (Respondent's Exhibit 4).

Dr. Levin performed a physical exam which revealed that the Petitioner's active right shoulder elevation and abduction were 120 degrees, while his active left shoulder elevation and abduction were 170 degrees. Dr. Levin's physical exam further found that the Petitioner's range of motion of the right knee was 0-85 degrees, while the left knee was 0-135 degrees (RX 4).

Dr. Levin noted that when the Petitioner was initially seen at PromptMed on April 6, 2023, there was "no comment that the examinee sustained a work-related injury." The Arbitrator notes that the PromptMed note from that date does state that the Petitioner sustained a slip and fall injury on March 10, 2023. Dr. Levin opined that since the records did not state the injury occurred at work, the Petitioner did not sustain a clinically relevant work-related injury to his right shoulder or right knee on March 10, 2023 (RX 4).

At his deposition, Dr. Levin admitted on cross-examination that in coming to his conclusion that the Petitioner did not sustain a work injury, he never reviewed the March 10, 2023 accident report that stated the Petitioner sustained a work-related injury to his right shoulder and right knee due to a fall on March 10, 2023 (RX 4, P. 38). Furthermore, Dr. Levin admitted that the Petitioner told him that he reported the injury to his employer on the date it occurred and that he did not want to seek immediate treatment as he hoped it would improve (RX 4, P. 38-39). Further, Dr. Levin admitted that his physical examination revealed clinical complaints in the right shoulder and right knee which were consistent with his measurements, and that the Petitioner was working full duty prior to the March 10, 2023 work injury (RX 4, P. 39-40).

Following the evaluation with Dr. Levin, the Petitioner's surgeries were denied and his temporary total disability benefits were terminated. The Petitioner testified that he returned to work at that point as he could not afford to be off work without pay.

The Petitioner testified that as of the date of arbitration he was still having pain and soreness with activity in his right shoulder. The Petitioner testified that he still has pain and soreness with activity in his right knee, especially when working which requires him to be on his knees in order to paint. The Petitioner testified that he is currently taking over the counter pain medication for the ongoing symptoms in his right shoulder and right knee.

The Petitioner testified that prior to the work injury on March 10, 2023 he was working his physical job in a full duty capacity and was not having any problems with his right shoulder or right knee at that point.

Dr. Olinger's records note that Petitioner was seen on November 2022 for right knee pain where he received an X-Ray but no follow-up treatment was noted. He also had right leg

cellulitis in February of 2023 for which he sought treatment with Dr. Olinger prior to his trip to Mexico.

CONCLUSIONS OF LAW:

Regarding issues (F.) Causal Connection and (K.) Prospective Medical Care, the Arbitrator finds as follows:

The Petitioner sustained an undisputed work injury on March 10, 2023 when he fell and in the wet hallway walking into the school building. The Petitioner testified that the hallway floor was wet as it was snowing outside, and he was carrying his work tools. Respondent stipulated that the work injury occurred on March 10, 2023.

The Petitioner filled out an accident report the same day which indicated that injured his right shoulder and right knee when he fell on the wet floor (PX 5).

Prior to the date of the accident, the Petitioner had no right shoulder injuries or symptoms, and the only prior right knee issue was a visit to his primary care doctor the year prior for which he needed no follow up care. The Petitioner was working full duty for the Respondent in a physical job prior to the date of the accident with no apparent orthopedic issues in his right knee or right shoulder.

The Petitioner testified that although he reported the work injury on the date it occurred he did not immediately seek treatment for his right shoulder and right knee because he was hoping it would get better. This is consistent with the testimony of Respondent's examiner, Dr. Levin, who admitted under cross-examination that the Petitioner told him that he reported the injury to his employer on the date it occurred and that he did not want to seek immediate treatment as he hoped it would improve (RX 4, P. 38-39).

The PromptMed Urgent Care note from April 6, 2023 reflects that the Petitioner had "persistent pain in right shoulder after slip and fall" on March 10, 2023 (PX 2). The note from the Petitioner's first visit with Dr. Hamming states that on 3/10/23 the Petitioner slipped and fell while walking into the school and "landed on his right shoulder and right knee" (PX 4).

The Petitioner underwent a course of conservative care which failed to provide relief. At his August 15, 2023 visit with Dr. Hamming for the right knee, Dr. Hamming noted that the Petitioner's right knee had not improved over the course of physical therapy, and the Petitioner was still experiencing pain. Dr. Hamming prescribed surgery on the Petitioner's right knee consisting of an arthroscopy with partial medial meniscectomy (PX 4). At his November 7, 2023 visit with Dr. Hamming for the right shoulder, Dr. Hamming stated that the Petitioner had been in physical therapy for six months, had tried a cortisone injection, and was not improving. Dr. Hamming prescribed surgery on the Petitioner's right shoulder (PX 4).

Dr. Levin, Respondent's Section 12 Examiner, performed a physical exam which revealed that the Petitioner's active right shoulder elevation and abduction were 120 degrees, while his active left shoulder elevation and abduction were 170 degrees. Dr. Levin's physical exam further found that the Petitioner's range of motion of the right knee was 0-85 degrees,

while the left knee was 0-135 degrees (RX 4). Dr. Levin testified that his physical examination revealed clinical complaints in the Petitioner's right shoulder and right knee which were consistent with his measurements (RX 4, P. 39-40).

Nonetheless, Dr. Levin opined that that since the initial PromptMed record did not state the injury occurred at work, the Petitioner did not sustain a clinically relevant work-related injury to his right shoulder or right knee on March 10, 2023. Dr. Levin admitted upon cross-examination that he never reviewed the March 10, 2023 accident report that stated the Petitioner sustained a work-related injury to his right shoulder and right knee due to a fall on March 10, 2023 (RX 4, P. 38). Furthermore, Respondent has stipulated that a work injury occurred that day.

The Arbitrator is not persuaded by Dr. Levin's opinion denying the Petitioner's surgeries based on a theory that no work injury occurred as the record shows that there was an accident report filled out the day the injury occurred stating it caused injury to the Petitioner's right shoulder and right knee. The Arbitrator does not find the opinion of Dr. Levin to be neither credible nor persuasive.

The Arbitrator notes Petitioner testified credibly at trial. The Arbitrator does not find that Petitioner's hesitation to seek medical treatment immediately after his injury is enough to break the chain of causation between his accident and subsequent treatment to his shoulder and knee. The Petitioner credibly testified as to the work injury he sustained on March 10, 2023 and the subsequent treatment he underwent to his right shoulder and right knee.

The Petitioner testified that as of the date of arbitration he was still having pain and soreness with activity in his right shoulder. He still has pain and soreness with activity in his right knee, especially when working, which requires him to be on his knees in order to paint. The Petitioner testified that he is currently taking over the counter pain medication for the ongoing symptoms in his right shoulder and right knee.

Based on the credible testimony of the Petitioner and the medical records of Dr. Hamming (PX 4) and PromptMed (PX 2), the Arbitrator finds that the Petitioner's current condition of ill-being is causally connected to the March 10, 2023 work accident, and that the Petitioner is entitled to the prospective medical care prescribed by Dr. Hamming.

Based on the foregoing, the Arbitrator finds that the Respondent shall authorize and pay the reasonable and necessary costs associated with the right shoulder and right knee surgeries prescribed by Dr. Hamming, as provided in Section 8(a) and 8.2 of the Act.

Regarding Issue (J.), Medical Expenses, the Arbitrator finds as follows:

The Arbitrator's findings regarding causal connection as noted above are incorporated herein. The Petitioner submitted medical bills totaling \$1,571.93 in Petitioner's Exhibit 1. Based on the Arbitrator's finding of causal connection and the record as a whole, the Arbitrator finds Respondent liable to pay to the providers the reasonable and necessary medical expenses that remain unpaid as provided in Section 8(a) and subject to the fee schedule of Section 8.2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032177
Case Name	Linda Johnson v. State of Illinois - Northern Illinois University
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0470
Number of Pages of Decision	22
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Bradley Melzer
Respondent Attorney	Rufus Barner

DATE FILED: 11/24/2025

/s/Christopher Harris, Commissioner

Signature

22 WC 32177

Page 1

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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LINDA JOHNSON,

Petitioner,

vs.

NO: 22 WC 32177

STATE OF ILLINOIS,
 NORTHERN ILLINOIS UNIVERSITY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, the reasonableness and necessity of the medical treatment and charges, prospective medical treatment, temporary total disability benefits, and penalties, 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 31, 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.

22 WC 32177

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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.

November 24, 2025

CAH/tdm
O: 11/20/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC032177
Case Name	Linda Johnson v. State of Illinois - Northern Illinois University
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Bradley Melzer
Respondent Attorney	Rufus Barner

DATE FILED: 5/31/2024

/s/ Michael Glaub, Arbitrator
Signature

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

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



May 31, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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
19(B)/8(A) ARBITRATION DECISION

LINDA JOHNSON
Employee/Petitioner

Case # **22WC032177**

V.

Consolidated cases: _____

Northern Illinois 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 Glaub, Arbitrator of the Commission, in the county of DuPage, on December 8, 2023 and proofs were closed on December 8, 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 8(a) surgical procedure: left foot hallux valgus reconstruction with a Lapidus procedure, 1st Tarsometatarsal joint arthrodesis and distal bunionectomy/correction hallux valgus and aftercare.

FINDINGS

On November 29, 2022, Respondent-Employer *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between the Petitioner and the Respondent-Employer, Northern Illinois University.

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

Timely notice of this accident *was* given to the Respondent-Employer.

Petitioner's Hallux Valgus current condition of ill-being *is not* causally related to the accident. Petitioner's left third, fourth & fifth toe current condition of ill-being is causally related to the accident.

In the year preceding the injury, the Petitioner earned \$19,894.56. The average weekly wage was determined to be \$523.24.

On the date of accident, Petitioner was 33 years of age and single with three dependent children.

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

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

ORDER***Temporary Total Disability***

Petitioner is entitled to temporary total disability benefits for 5/7 weeks representing the period from December 3, 2022 through December 7, 2022. Respondent shall receive a credit of \$9,146.08 for temporary total disability that have been paid.

The Arbitrator finds the Petitioner did not miss work due to an injury arising out of her employment nor during the course of her employment during the period of February 8, 2023 through December 8, 2023. Therefore, the Petitioner is denied temporary total disability benefits for February 8, 2023 through December 8, 2023.

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

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

Michael Glaub

Arbitrator

May 31, 2024

PROCEDURAL HISTORY

The Petitioner-employee, Linda Johnson, pursued this action under the Illinois Workers' Compensation Act ("Act") and sought relief from the Respondent-Employer, Northern Illinois University ("NIU").

On December 8, 2023, hearing was held and proofs were closed before Arbitrator Glaub in Wheaton, Illinois. Attorney Bradley Melzer of Cronauer Law, LLP represented the Petitioner. The Illinois Attorney General's Office represented NIU. At the hearing, the Arbitrator heard testimony from the Petitioner and admitted the Petitioner's Exhibits 1 through 7 (Petitioner's Exhibit 3 was admitted over the Respondent's objection) and Respondent's Exhibits 1 through 6. The issues at hearing were causation, medical bills, temporary total disability, nature and extent, and medical treatment. (Arbitrator's Exhibit Ax 1.) After hearing the proofs and reviewing the evidence presented, the Arbitrator makes the following findings on the disputed issues.

STATEMENTS OF FACTS

A. Summary of Work Injury

On November 29, 2022, the Petitioner was working as a Kitchen Helper for Northern Illinois University. As part of her job duties, the Petitioner was preparing food for NIU students, cooking and preparing main courses, lifting items weighing 40lbs or more, and cutting pastry. As part of her duties on November 29, 2022, the Petitioner was draining a pot of boiling water by releasing the water from a spout into a pot on the ground. The water splashed out of the pot onto

the ground and her left foot. The water went through her shoes and she suffered 2nd degree burns to the third, fourth, and fifth digits of her left foot. (Px1; p9).

B. Summary of Petitioner's Medical Treatment Based Upon Petitioner's Testimony and Medical Records

The Petitioner sought, and received, emergency treatment from Physicians Immediate Care the same day as the accident. Petitioner reported water falling on her 3rd, 4th & 5th digits (toes). PA Etuk observed blistering, swelling, ecchymosis, and tenderness over her third, fourth, and fifth toes. She was diagnosed with 2nd degree burns on left third, fourth and fifth toes. (Px1; p9). Petitioner was treated with Silvadene application and a dressing. Physicians noted the Petitioner left the room "ambulating without difficulty." (Px1; p10). Upon discharge, the Petitioner was prescribed Pharbetol and ibuprofen, and she was directed to use Silvadene cream twice per day for the five days following the visit. She was then directed to follow up approximately three days later. The Petitioner was released back to work with restrictions for sedentary work only. (Px1; p11,12). A diagram of the foot contained circles around the area treated. That circle is around the top of the Left 3rd, 4th & 5th toes. (Px1; p19).

On December 2, 2022, the Petitioner returned to Physician's Immediate Care for recheck. At this visit, the petitioner stated that the cream she applies to her toes causes a burning sensation and that she has more burning throughout the night. (Px1; P20). She also complained her foot continued to hurt but that it was "more burning than pain." Px1; p24). The petitioner's diagnosis and her work restrictions remained the same as the prior visit. (Px1; p26). She was advised to change her dressing twice per day, apply the Silvadene cream twice per day, and to "continue to wear the shoe when you are active". (Px1; p22,27,33). She was released to work with the same restrictions. At the December 7, 2022, follow up, the notes read petitioner came in for a follow up of burn of left toes. The Petitioner had no blisters, and the skin was healing well.

(Px1; p36). Despite the progress, the Petitioner continued to complain of constant pain. (Px1; p35). The Petitioner was released “fit for duty without restrictions”. However, petitioner was directed to wear the ortho shoe and the note states Petitioner should sit and elevate foot after every two hours of work. (Px1; p37,47).

The Petitioner returned to Physician’s Immediate Care on December 12, 2022. She complained of persistent pain over the ventral aspect of the left foot, with numbness and tingling as well. (Px1; p49). The skin of her left foot was noted to be healing well, but that she continued to experience pain with palpation. There were no blisters, signs of infection, active drainage, or redness noted. She was prescribed Voltaren cream for pain management, Bacitracin instead of the Silvadene, and directed to follow up on December 19 for recheck. The physician assistant Etuk maintained there was no need for the petitioner to be on sit down duty only, and did not restrict the Petitioner from working. (Px1; p61).

The Petitioner returned to Physicians Immediate Care again on December 19, 2022 with complaints of continuing pain of a pulling/burning sensation as well as limited ability to wiggle digits 5-3. (Px1; p65). The Petitioner was prescribed amitriptyline to address neuropathic pain and was again restricted to sit down work only. (Px1; p73,81). The Petitioner’s last visit to Physicians Immediate care was on December 27, 2022. She complained of pain, tightness, burning, and an inability to put weight on her left foot (Px1; p91). Following a physical examination, she was discharged from medical care and released to full duty work, without restrictions on December 19, 2022. The attending physician, Dr. Terry Strawser MD, expected petitioner to attain full resolution within 10 days. There is no referral from the Physicians Immediate Care Center in their medical records (Px1; p93).

On December 28, 2022, the Petitioner visited podiatrist, Dr. Pramod Patel of Northwestern Medicine. The initial progress note of Dr. Patel on December 28, 2022, contains a section named “Referring Provider” the answer is “Referral, Self”. (Px2; p152). She complained of pain in her left foot after pouring hot water on her foot at work. (Px2; p153). The Petitioner informed Dr. Patel she used a topical burn cream for about a week, which did not help. *Id.* Dr. Patel observed the Petitioner was wearing a surgical shoe at the exam. *Id.* Dr. Patel advised she use Aquaphor ointment to the burn site and referred her to physical therapy. (Px2; p156).

The Petitioner was evaluated for physical therapy at Northwestern Medicine on January 19, 2023. She complained of pain in the dorsum of her foot that radiated up into her calf, increased pain on weight bearing, and difficulty bending toes. (Px2; p147). She was prescribed 12 sessions of physical therapy and attended 8 sessions between January 19, 2023 and February 23, 2023. During physical therapy, she complained of pain at various ratings (of a 10-point scale), she also began complaining of pain in her left ankle and right leg. The physical therapist regularly observed the Petitioner did not display any painful expressions other than an antalgic gait and her own reports. (Px2; p131). On January 23, 2023, the Petitioner reported her foot wound had not healed. However, the physical therapist observed the wound was “fully healed with no observable complications.” The physical therapist also documented the Petitioner presented to the session wearing a surgical shoe, large sock, and forefoot wrapped although she was previously educated to wear normal shoes and not the surgical shoe, but that she was not compliant. (Px2; p124). The Petitioner admitted in her testimony she continued to wear the surgical shoe despite being directed to stop. She further testified she wore the surgical shoe because she could not stand without it. The physical therapist also reports that the petitioner’s subjective complaints of pain are not substantiated by her objective deficits. (Px2; p139).

On January 30, 2023, she followed up with Dr. Patel who observed she was not limping. He also noted the Petitioner believed physical therapy had “really been helping.” (Px2; p108). However, petitioner continued to complain of pain. Dr. Patel referred her to Dr. York in orthopedic surgery and released her to return to work without restrictions. (Px2; p115-116). The Petitioner testified she returned to work on or about February 6, 2023, but she was in too much discomfort and left early. On February 7, 2023, the Petitioner visited the emergency room at Northwestern Immediate Care in Sycamore. (Px2; p65). Although she testified she left work early on February 6, 2023, due to the amount of pain she experienced, she informed emergency room staff she worked full eight hours. The Petitioner was discharged from the emergency room and was directed to follow RICE (rest, apply ice, use pressure to prevent swelling, and elevate the injured body part). Px 2 pg. 91. There is also a note in the Northwestern medical records of February 7, 2023, that the petitioner may return to work (Px2; p71). There is no reference in these records of any work Restrictions.

The Petitioner saw Dr. York for an evaluation on February 13, 2023. Dr. York discussed a topical compound cream for the burn as well as specific shoes to allow more room to accommodate the burn and the bunion. Dr. York further diagnosed the Petitioner with Severe Hallux Abductovalgus deformity of her left foot and proposed she undergo Lapidus-bunionectomy. However, Dr. York did not feel the bunion nor the recommended surgical treatment were related to the November 29, 2022 work accident. (Px2; p35). After this visit, the Petitioner continued with physical therapy. Petitioner was seen in Physical therapy on February 15, 2023. The therapist advised petitioner that Dr. York had recommended continued physical therapy. The therapist reports that the petitioner responded she “has been very busy running around everywhere (errands)”

The petitioner chose to change her treating doctors. On March 30, 2023, the Petitioner was evaluated by Dr. Peterson at Suburban Orthopaedics. Dr. Peterson's records indicate the purpose of his exam was to provide a second opinion. Dr. Peterson took x-rays of the Petitioner's foot and recommended she undergo left foot hallux valgus reconstruction with a Lapidus procedure. Px4 pg. 32. Dr. Peterson also opined if she did not have the work injury and if she wasn't in the CAM boot, her bunion would still be present, but she had no pain before the work injury. *Id.* The Petitioner saw Dr. Peterson 8 more times between April 20, 2023 and October 30, 2023. She received no treatment from Dr. Peterson at each of these visits. As of the date of the hearing, she had not received any further treatment for her left foot.

Currently, the Petitioner claims she has not been back to work due to pain related to the bunion. She requests the employer be directed to pay for arthrodesis and bunionectomy.

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).

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

It is not disputed that the petitioner sustained accidental injuries to her third, fourth and fifth left toes on November 29, 2022. It does not appear that there is any dispute that the petitioner's medical condition of her third, fourth and fifth toes are causally related to her injury. This would include petitioner's treatment with Physicians Immediate Care and Northwestern Medicine.

The Arbitrator finds the Petitioner underwent significant treatment for her left foot burn injury to her third, fourth and fifth toes. This included conservative treatment including physical therapy, topical creams, and pain medication. The Arbitrator notes that the Hallux Valgus deformity/condition is not located at the burn site but rather on the other side of the foot.

Petitioner relies on the medical opinion of her second choice of treating physician, Dr. Peterson. Dr. Peterson of Suburban Orthopedics acknowledged petitioner's Hallux Valgus condition existed prior to petitioner's November 29, 2022, work injury. Dr. Peterson believes that this pre-existing injury was aggravated by the work injury and treatment. His opinion appears to be primarily based on the assumption that the condition was asymptomatic prior to the injury. Dr. Peterson notes the presence of a bunion at the site of the pain. He recommends a TMT fusion with a Silver Bunionectomy and other distal soft tissue to realign the sesamoids. Dr. Peterson reports that petitioner claimed on October 2, 2022, that her CAM Boot she has been wearing was throwing off her stride.

However, the Arbitrator notes that her treating physician, Dr. Pramard Patel at Northwestern Medicine referred petitioner to Dr. York of the same medical group. Dr. York advised the petitioner throughout his treatment of her to stop wearing the CAM Boot because she does not need it for her work injury of November 22, 2022. The petitioner's physical Therapist at Northwestern medicine also reiterated Dr. Patel's direction to discontinue the use of her CAM Boot and that she should wear regular shoes. (Px2; p141).

Dr. York also recommended a surgery involving a left Arthrodesis of the First Metatarsal-Cuneiform joint (Lapidus-Bunionectomy). (Px2; p35) Dr. York specifically states in his medical records that he did not believe the bunion and the recommended associated surgery are a result of the work injury. (Px2; p35).

The petitioner testified that she had been referred to Northwestern Medicine by Physicians Immediate Care. However, her testimony is rebutted by the treating medical records

of Physicians Immediate Care and Northwestern Medicine. Specifically, the medical records indicate the petitioner was discharged from care at Physicians Immediate Care by Dr. Strawser on December 27, 2022, and no referral to another provider was tendered. (Px1; p93). Similarly, the initial medical records of Northwestern Medicine indicate that petitioner first saw Dr. Patel on December 22, 2022, and the intake form contains a box labeled Physician Referral. The answer in that box indicates “Self” (Px2; p152). The Arbitrator finds that the physicians at Northwestern Medicine were in fact, the petitioner’s initial choice of treating physician.

On August 30, 2023, the Petitioner underwent an independent medical examination with orthopedic surgeon, Dr. Johnny Lin. Rx 3. Dr. Lin examined the Petitioner and reviewed her medical records to date. Upon completing his examination, Dr. Lin diagnosed the Petitioner with left foot second degree burn of the 3rd, 4th, and 5th toes and left foot Hallux Valgus deformity. Rx3 pg. 3. Dr. Lin opined that the burns of the left foot are causally related to the petitioner’s November 29, 2002, work accident. However, Dr. Lin does not believe that the Hallux Valgus condition is related to the work accident. (Rx3; p4).

Dr. Lin did not observe any anomalies with respect to the Petitioner’s range of motion or strength. Dr. Lin observed the Petitioner complained of more severe symptoms than what the objective findings led him to believe. *Id.* The Arbitrator is aware these observations are similar to those made by the physical therapists.

The Arbitrator finds that the petitioner was not a credible witness. As stated above the petitioner’s sworn testimony regarding a referral by Physicians Immediate Care to Northwestern Medicine is rebutted by the treating medical records. Further there are repeated references in the treating medical records of Physicians Immediate Care and Northwestern Medicine that her

subjective complaints of severe pain in her left foot were not substantiated by any objective findings. The Arbitrator also notes that a central part of the petitioner's claim in order to prove up her case is that her pre-existing condition was wearing a CAM Boot. However, petitioner had been repeatedly told by her treating physician and her physical therapists at Northwestern Medicine to stop wearing the CAM Boot and instead to wear regular shoes. Further, despite petitioner's claim of severe foot pain and inability to work, she told her therapist that the worst of her pain is at night when standing for longer periods of time. Petitioner also reported to her physical therapist that she has "been very busy running everywhere (errands)". (Px2; p26)

The Arbitrator notes that neither counsel chose to take the depositions of any of the multiple treating physicians or the examining physician in which their respective medical opinions would have been sworn and subject to cross examination.

Based on all of the above, the Arbitrator finds that petitioner's left third, fourth and fifth toe condition are causally related to her accidental injury of November 29, 2022. The Arbitrator also failed that the petitioner failed to prove that her Hallux Valgus condition is causally related to her work injuries. In making this finding the Arbitrator adopts the medical opinion of the petitioner's own treating physician Dr. York of Northwestern Medicine. The Arbitrator also took into account the opinion of the examining physician Dr. Lin.

G. What is the Petitioner's Average Weekly Wage?

Petitioner and Respondent have stipulated that Petitioner earned \$19,894.56 in the 52 weeks prior to the accident. (Ax1)

The question for the Arbitrator in this case is whether her wages are divided by 52 weeks or 38 weeks. The Arbitrator finds that the Petitioner did not earn wages, nor was paid wages, between May 15, 2022, and August 15, 2022. The June 15, 2022, paycheck appears to be some type of fringe benefit. Regardless, the total has been stipulated to by the parties.

This case, unlike *Washington District 50 Schools*, does not have Petitioner collecting a paycheck in the summer months. The Arbitrator also finds support for this position from Petitioner's exhibit 7, page 39 which notes there is a summer layoff period between May and August. Additionally, there is a winter lay off period, which is why the Northern Illinois University benefits coordinator asked Petitioner whether she wanted to use benefit time 'over holiday break' (Px7; p7).

Based on all of the above, the Arbitrator finds that Petitioner's Average Weekly Wage for this case is \$523.54.

J. Whether The Medical Services Sought by Petitioner Were Reasonable and Necessary.

The Petitioner presented sufficient, credible evidence that as a result of the injuries sustained on November 29, 2022, and that Petitioner incurred medical expenses from Physicians Immediate Care and Northwestern Medical which were reasonable and necessary treatment for her injuries. Petitioner submitted into evidence medical bills. (Px1&3). The Respondent

submitted into evidence a ledger, contained within Rx 2 demonstrating drafts issued to pay for treatment the Petitioner underwent after the November 29, 2022, work accident. The Arbitrator finds that NIU made payments of \$8,053.84 for the Petitioner's medical treatment. The Arbitrator further finds the Petitioner submitted certain medical bills through her employer sponsored health insurance plan. (Px3; p18).

Based on all of the above, The Arbitrator finds the medical services at Physicians Immediate Care and Northwestern Medicine up to and including February 23, 2023, were causally related to the petitioner's accidental injuries of November 29, 2022. In addition, the medical bills from these providers were reasonable and necessary. The Respondent is entitled to a credit for all medical paid pursuant to Section 8(a) and for any medical bills paid by the respondent's group carrier.

The Arbitrator further finds that based on his finding above that petitioners' Hallux Valgus condition is not causally related to her accidental injuries on November 29, 2002, that the medical bills of Suburban Orthopedics and Dr. Peterson are denied. More, specifically, all medical bills after February 23, 2023, are denied.

J. What Temporary benefits are due?

The Petitioner claims to be entitled to TTD benefits from November 30, 2022, to February 5, 2023, and February 7, 2023, to December 8, 2023. The Arbitrator finds that the

Petitioner did not present sufficient and credible evidence that she sustained injuries that arose out of her employment that medically restricted her from work from February 7, 2023 to December 8, 2023. This ruling is based on the Arbitrator's findings that petitioner's Hallux Valgus condition is not causally related to her accidental injuries of November 29, 2022.

"The period of temporary total disability encompasses the time from which the injury incapacitates the claimant until such time as the claimant has recovered as much as the character of the injury will permit, i.e., until the condition has stabilized." *Gallentine v. Industrial Comm'n* 201 Ill. App. 3d 880, 886 (2nd Dist. 1990). To be entitled to TTD benefits a claimant must prove not only that he did not work but that he was unable to work. *Freeman United Coal Min. Co. v. Indus. Comm'n*, 318 Ill. App. 3d 170, 175, 741 N.E.2d 1144, 1148 (2000). 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. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990). Factors to be considered in determining whether a claimant has reached MMI include whether he has been released to return to work, medical evidence, testimony concerning the claimant's injury, the extent of his injury, and whether the injury has stabilized. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (5th Dist. 2004).

Petitioner's medical records note that she was released to return to work with varying levels of restrictions throughout her treatment. She was restricted to sit down work only after her initial treatment on November 29, 2022. Px 1 pg. 11. She was told she no longer needed to be on sit-down duty on December 7, 2022. Px 1 pg. 37. She was released to full duty without restrictions on December 27, 2022. Px 1. Pg. 93. Her medical records further indicate she was released to work without restrictions on January 30, 2023. Px 2 pg. 126. On February 13, 2023, Dr. York placed her on 4 hour shifts light duty work. (Px2; p45). However, from review of Dr.

York's records, the Arbitrator finds these restrictions were not related to the burn injury suffered on November 29, 2022, but rather to the bunion, which he opined was not related to the November 29, 2022 injury. Dr. Peterson provided a note that the Petitioner was "medically unable to work." (Px4; p34). However, Dr. Peterson failed to provide any explanation to support this finding. The Arbitrator further notes Dr. Peterson authorized the Petitioner to participate in sports "as tolerated" raising further suspicion for the medical need for the Petitioner to be off work.

The Respondent presented evidence that it paid \$15,446.29 in TTD to the Petitioner for the period January 3, 2023 to September 10, 2023. (Rx1). The Arbitrator notes the Petitioner testified the Respondent mailed her a check totaling \$6,300.21 that was later cancelled and the parties stipulate this check was cancelled. The parties stipulate and agree the Respondent paid the Petitioner \$9,146.08 in TTD during this period (Ax1). The Petitioner provided paystubs showing she worked 85.26 hours during the period December 2, 2022, to January 15, 2023, and 13 hours from February 1, 2023, to February 15, 2023.

The Arbitrator finds that the Petitioner received no treatment for her burn after February 23, 2023. The Arbitrator found above that the petitioner's Hallux Valgus medical condition is not causally related to the petitioner's accidental injuries of November 22, 2022. The Arbitrator finds petitioner is entitled to temporary total disability benefits from November 30, 2022, through December 7, 2022. The petitioner failed to prove she was entitled to temporary total disability benefits after her release on December 7, 2022. The Arbitrator also relied on respondent payroll records (Rx 5) which identify the petitioner's income received from the respondent in the pay periods ending December 15, 2022 (\$997.92), and December 31, 2022 (\$900). The Arbitrator also notes petitioner was released for full duty work on December 27,

2022, by Physicians Immediate Care. The Arbitrator finds that the Petitioner received no treatment for her original burn injury after February 23, 2023. The only treatment petitioner had after February 23, 2023, was for her Hallux Valgus condition. The Arbitrator found above that the petitioner's Hallux Valgus medical condition is not causally related to the petitioner's accidental injuries of November 22, 2022.

The Respondent is entitled to a credit for TTD benefits paid to the Petitioner between January 3, 2023, and September 10, 2023.

M. Should Penalties or Fees be imposed upon Respondent

The Arbitrator finds that the respondent properly relied on the medical opinions of Dr. Shane York who is one of the petitioner's treating physicians. Specifically, Dr. York who was in the chain of the petitioner's treating physicians Found that petitioner's Hallux Valgus condition was not causally related to her accidental injuries of November 29, 2022. The petitioner's treatment with Dr. Peterson, the petitioner's temporary total disability benefits and the proposed surgery were all denied based on the medical opinions of Dr. York.

Based upon the above, the Petitioner's Petition for Penalties pursuant to Section 19(k) and 19(l) is denied. Furthermore, the Petitioner's Petition for attorneys' fees pursuant to Section 16 is denied.

O. Petitioner IS NOT entitled to Additional Medical Care

The Arbitrator finds that the Petitioner's testimony and medical records support that she needs additional medical treatment for her Hallux Valgus condition. However, based on the

Arbitrator's findings above, the Petitioner's current Hallux Valgus condition of ill being is not causally connected to the November 29, 2022, work accident. Therefore, Petitioner's request prospective medical treatment of this condition is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC010520
Case Name	Claudio Corona v. Woodrige Enterprises, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0471
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Brian McManus, Jr.
Respondent Attorney	Ilir Imeri

DATE FILED: 11/24/2025

/s/Maria Portela, Commissioner

Signature

22WC010520

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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))
☒ Modify <u>down</u>	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CLAUDIO CORONA,

Petitioner,

vs.

NO: 22WC010520

WOODRIDGE ENTERPRISES, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, medical expenses, wage/benefit rate and “all issues in dispute,” 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).

Regarding causation, Respondent argues that Petitioner sustained an intervening motor vehicle accident on July 29, 2023, which broke the chain of causation, and that the opinion of its Section 12 examiner, Dr. Wellington Hsu, is more persuasive than Petitioner's surgeon, Dr. Matthew Colman. Respondent also argues that Petitioner had “unnecessary and unexplained” gaps in treatment. *R-brief at 5, 10, 14 (unnumbered)*.

We find Respondent's argument regarding the gaps in treatment to be without merit. The records clearly show that, on March 1, 2022, Dr. Soliz prescribed a lumbar epidural steroid injection (ESI) at L5-S1. *Px2, T.313*. On March 24, 2022, a telephone record states, “Contacted patient to let him know insurance denied his 4/15 procedure with Dr. Soliz and that he will be removed from the schedule until a decision is reached after the appeal.” *Id, T.360*. On April 11, 2022, the workers' compensation insurance carrier denied the procedure and, on April 11, 2022, Careworks issued a Utilization Review report non-certifying the procedure. *Rx5, T.985*. On August 17, 2022, Petitioner was seen by Respondent's §12 physician, Dr. Hsu, who found that Petitioner only sustained a lumbar

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strain, required work hardening for two to four weeks, did not require injections and could work with 50-pound restrictions. *Rx1, T.948*. We note that Petitioner's Dr. Soliz continued to recommend Petitioner be completely off work at this time. *Px2, T.397*.

On September 13, 2022, Petitioner saw Dr. Srinivas-Prasad Jolepalem who noted, "has work related injury (back) in 2021 and states they cancelled his visits and is no longer getting pain medications/muscle relaxers due to insurance reasons." *Px1, T.52*. Dr. Jolepalem prescribed cyclobenzaprine (Flexeril). *Id., T.54*. On September 30, 2022, a telephone note indicates, "Pt was advised Dr. Soliz recommends that pt call WC to see why they denied coverage for the injection." *Px2, T.421*. Dr. Soliz issued another off work note pending a lumbar ESI that had been scheduled for October 28, 2022. *Id., T.738*.

For reasons that aren't entirely clear from the records, but most likely related to the lack of insurance approval, the ESI was not performed until June 7, 2023. *Px2, T.462*. Interestingly, both Petitioner's medical exhibit (*Px6, T.929*) and Respondent's payment ledger (*Rx4, T.968*) indicate that the worker's compensation insurance carrier paid the physician charges for this injection but did not pay the hospital charges. (*T.932, T.968*). Petitioner sustained the motor vehicle accident on July 29, 2023 and had a follow up appointment with Dr. Soliz on September 6, 2023.

Based on the preceding, we find that the gaps in Petitioner's treatment were due to the workers' compensation insurance carrier's denial of the lumbar ESI that Dr. Soliz recommended.

On the issue of the alleged intervening motor vehicle accident (MVA) that Petitioner sustained on July 29, 2023, Respondent argues:

The Appellate Court identified four factors to apply in considering whether an intervening accident severs causation between the initial accident and the petitioner's current condition of ill-being. *Nat'l Freight Indus. v. Ill. Workers' Comp. Comm'n*, 993 N.E. 2d 473 (2013). First, whether the petitioner's symptoms changed following the intervening accident. *Id.* Second, whether the intervening accident caused a change in pathology. *Id.* Third, whether the intervening accident caused a change in future treatment including surgical intervention. *Id.* Fourth, whether the intervening accident caused a change in work status. *Id.*

R-brief at 9 (unnumbered).

Initially, the Commission points out that the appellate court in *PAR Electric v. IWCC*, 2018 IL App (3d) 170656WC, 118 N.E.3d 681, clarified that *National Freight* did not set forth a four-factor test and stated:

Respondent attempts to use our analysis in *National Freight Industries* to support its argument that the Commission's finding regarding causation is contrary to law. In particular, respondent asserts that in *National Freight Industries*, we identified four factors to assess whether a subsequent work-related event constitutes an independent intervening cause that severs the chain of causation from an earlier work injury. Contrary to respondent's claim, however, we did not set forth such a test in *National Freight Industries*. Rather, we merely recounted the evidence in the record that supported the Commission's resolution of the issue. For the aforementioned reasons, we reject respondent's claim that the Commission's finding regarding causation was contrary to law.

PAR Electric v. IWCC, 2018 IL App (3d) 170656WC, ¶ 60, 118 N.E.3d 681.

Second, the issue in *National Freight* was whether a subsequent *work-related* accident completely severed the causation from a previous *work-related* accident. This is not the situation in the case at bar since Petitioner's subsequent MVA was not work-related.

Petitioner testified on cross-examination that he was in a car accident in July 2023. *T.23*. No additional testimony was elicited about whether Petitioner sustained any injuries in that accident, whether his symptoms changed, etc. However, the police report states "No tow needed. EMS called to the scene but refused." *Rx3, T.963*. Therefore, we make the reasonable inference that there was no major damage to Petitioner's vehicle and he did not require medical treatment at that time. Significantly, there is no evidence of any treatment until September 6, 2023 when Petitioner followed up with Dr. Soliz. Although this record does not mention the July 29, 2023 MVA, there does not seem to have been any significant change in Petitioner's lumbar condition and symptoms at that visit. The Commission finds that the lack of medical treatment in the weeks after the MVA and the fact that Petitioner's symptoms seem to have been similar before and after the MVA tend toward a finding that this was not an intervening accident that broke the chain of causation.

Nevertheless, we will address Respondent's arguments. First, regarding an alleged change in symptoms, we find that the weakness and mild numbness identified by Dr. Colman at Petitioner's first visit on November 8, 2023 is explainable as a continuation of his post-work-accident lumbar condition due to Respondent's failure to authorize continued treatment as recommended by Dr. Soliz. In addition, although Petitioner had complained of some weakness, his exam revealed 5/5 strength.

Second, the alleged change in pathology noted on the November 8, 2023 MRI does not seem to be as significant as Respondent claims. The report from the November 5, 2021 MRI, which was performed shortly after Petitioner's work accident, is not in evidence so we are unable to compare the two MRI reports. We also note that, although Dr. Colman identified an L5-S1 herniation on the November 2023 report, it does not appear that he actually reviewed the films from the November 2021 MRI. Therefore, Dr. Colman might have found the herniation present in 2021 as well, if he had seen those films. Additionally, on March 4, 2024, Dr. Hsu reviewed the November 2023 MRI film but did not mention a herniation at L5-S1 and found "no evidence of acute structural injury." *Rx2, T.956*. Dr. Hsu wrote, "the intervening MVA on 07/29/2023 certainly could have caused the low back symptoms that would have led to the need for treatment with medical visits. It is my opinion that his current symptoms at this time would be secondary to the preexisting condition of lumbar spondylosis that is in no way related to trauma." Thus, even Respondent's §12 examiner did not believe that Petitioner sustained an intervening injury in the MVA because Dr. Hsu believed Petitioner's current symptoms were related to his preexisting lumbar spondylosis. We therefore conclude that the MVA did not change Petitioner's lumbar pathology.

Third, Respondent argues that Petitioner only underwent conservative treatment prior to the MVA but "within four months of his motor vehicle accident, Petitioner was recommended for a fusion." *R-brief at 11 (unnumbered)*. However, Petitioner was finally able to undergo the lumbar ESI on June 7, 2023, but that only provided relief for a few days. *Px2, T.529*. Dr. Soliz then performed medial branch blocks on October 25, 2023. *Id., T.594*. On November 8, 2023, Dr. Colman noted that those "provided significant relief." *Px4, T.904*. However, on December 15, 2023, Dr. Colman noted that the relief only lasted 15 to 22 days and he recommended fusion surgery. *Id., T.908*.

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We find that the MVA was not an intervening cause of Petitioner's need for a fusion but, rather, that the recommendation for a fusion remains related to Petitioner's work injury after the two injections only provided temporary relief.

Fourth, Respondent argues that Dr. Hsu opined that Petitioner could return to work with 50-pound restrictions prior to the MVA and that the MVA could have led to the need for further treatment. Respondent claims, "This additional treatment did include Petitioner being taken off work." *R-brief at 11 (unnumbered)*. However, we do not agree with Respondent's logic. Dr. Hsu did not recommend that Petitioner be off work after the MVA and Petitioner had been taken off work completely by his treating physicians since shortly after his work accident. Therefore, we find that there had not been any change in Petitioner's work status after the MVA.

Ultimately, Respondent argues that Dr. Hsu's opinion should be more persuasive because he was aware of the MVA while Petitioner's treating physicians were not and "[w]ithout this relevant information Dr. Coleman's opinion falls short of meeting Petitioner's burden." *Id.* We disagree. The evidence shows that the MVA was a minor event which caused no serious damage to Petitioner's vehicle or to himself and this is most likely why it was not mentioned in the medical records. Even Dr. Hsu causally relates Petitioner's need for surgery to his pre-existing spondylosis so there is no medical opinion that the MVA was actually an intervening accident which broke the causation chain.

Based on all of the above, the Commission finds that Petitioner's work accident remains at least *a* contributing factor in his current condition of ill-being and need for fusion surgery as recommended by Dr. Colman.

On the issue of Temporary Total Disability (TTD), we modify the start date and find that Petitioner is entitled to TTD beginning November 3, 2021 when Petitioner first saw Dr. Saldanha and was provided an off work note. *Px1, T.76*. Although Dr. Saldanha wrote that Petitioner had been unable to work since October 28, 2021, we find that the retroactive portion of this off-work note is not valid. Respondent also argues that it "should be awarded credit for overpayment of TTD benefits from October 2022- March 2023 due to Petitioner's unnecessary and unexplained failure to treat." *R-brief at 14 (unnumbered)*. As discussed previously, this gap in treatment is due to Respondent's failure to authorize treatment and we found that the alleged intervening MVA did not break the chain of causation. Therefore, Petitioner is entitled to TTD through the date of hearing on January 7, 2025. We award 166 weeks of TTD benefits from November 3, 2021 through January 7, 2025.

Regarding medical expenses, the Commission finds that the medical billing statements in evidence do contain all of the necessary information, including CPT codes, for Respondent to process the payments. Further, Respondent's payment log (*Rx4*) indicates that it already paid many of these bills, so we do not accept its argument that it did not receive the bills in proper format. We make the following findings regarding the specific bills, which are all subject to the fee schedule in §8.2 of the Act:

- 1) Regarding the Loyola Medicine expenses, Petitioner's summary indicates that he was requesting \$7,407.91 "for services on 11-15-21." However, this summary is not substantive evidence and we find it was not intended to be a stipulation that Petitioner was only entitled to this amount. The Commission finds that the bills in evidence include reasonable, necessary and causally related charges for many dates, which are supported by medical records in evidence. We find that Petitioner is entitled to the medical expenses itemized at *Px6, T.927*

through 932 in the amount of \$10,824.46. We note that the bills in *Px6, T.933 and 934* are duplicative of charges that are already included in our award.

- 2) Respondent argues that Petitioner's "medical bill payment log failed to list Dr. Saldanha's medical bills." *R-brief at 13 (unnumbered)*. Admittedly, Petitioner's medical bills exhibit (*Px6*) is a little confusing because the summary page lists "Roseland Medical Center" and indicates it is for services from "11-3-21 through 8-11-22." *Px6, T.925*. The supporting documentation does not include bills from Roseland Medical Center but it does include a billing statement from MedPlus, which contain Dr. Saldanha's charges. *T.936*. Petitioner asks for \$805.00, which is the total of these charges, but the Commission finds that only the \$85.00 charge on November 3, 2021 is related to Petitioner's accident. The March 9, 2022 visit was for a refill of blood pressure medication, complaints of gout and blood tests unrelated to Petitioner's low back injury. Similarly, the August 11, 2022 telehealth visit was for gout and no treatment was rendered for the low back.
- 3) Petitioner requests the Athletico bills totaling \$12,414.00 from November 29, 2021 through February 14, 2022. *Px6, T.925*. The supporting billing statements and medical records generally support these expenses but we note that only the first two pages of the Athletico bills are in evidence. *T.939-40*. Page "1 of 3" starts with November 29, 2021 and page "2 of 3" ends with February 7, 2022. Page "3 of 3" is missing. There is an Athletico record, dated February 14, 2021 in evidence, which documented Petitioner's Functional Status Report and Discharge. *Px3, T.745*. We note that there is no bill in evidence for this date even though Respondent's payment log indicates that it was paid. *Rx4, T.971*.

On the Request for Hearing form, Respondent stipulated, "R has paid or will pay any and all reasonable, necessary, related bill up to the [sic] 3/4/24. R denies liability for any and all disputed or unrelated medical and demands strict proof." *ArbXI*. March 4, 2024 is the date of Dr. Hsu's last §12 records review report. The Athletico record on February 14, 2022 is in evidence, which reflects that visit was causally related to Petitioner's work injury. Respondent paid the bills through February 14, 2022, which indicates that it did, in fact, receive the bills with all necessary information even though Petitioner's medical exhibit is missing the third page of Athletico charges. We affirm the Arbitrator's award of \$12,414.00 for the Athletico bills from November 29, 2021 through February 14, 2022.

- 4) Regarding the Walmart Pharmacy bills, Respondent argues that Petitioner "failed to provide any corresponding records or bills relating to same." *R-brief at 13 (unnumbered)*. However, *Px6* contains the following Walmart receipts:

6/15/23	\$16.80	Diclofenac prescribed by Dr. Soliz
6/16/23	\$84.85	Cyclobenzaprine prescribed by Dr. Soliz

Px6, T.943.

We find that the \$101.65 total charge for these prescriptions is supported by the evidence because the records clearly state they were prescribed by Dr. Soliz (*Px6, T.943*) and Dr. Soliz's June 7, 2023 record indicates that those two medications were discontinued but then reordered. *Px2, T.465*.

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- 5) Petitioner's medical bill exhibit includes a billing statement from OrthoMidwest (Dr. Matthew Colman) totaling \$2,397.10. *Px6, T.942*. All of the charges seem to be supported by the records in evidence except the charge on October 4, 2024 for \$215.00 because there is no corresponding medical record. Therefore, the Commission modifies the award for Dr. Colman's bills to \$2,182.10 (\$2,397.10 - \$215.00).

In summary, we award the following medical expenses subject to the fee schedule in §8.2 of the Act:

Loyola Medicine	\$10,824.46
MedPlus (Dr. Saldanha)	\$85.00
Athletico	\$12,414.00
Walmart Pharmacy	\$101.65
OrthoMidwest (Dr. Colman)	\$2,182.10

Total: \$25,607.21

Regarding Petitioner's average weekly wage (AWW) and benefit rates, the Arbitrator found that Petitioner's AWW was \$1,080.00, which is what Petitioner claimed on the Request for Hearing form. *ArbXI*. However, the Arbitrator did not explain how he came to that conclusion or provide any analysis of Respondent's claim that Petitioner's AWW was \$823.47 based on its exhibit (*Rx6*).

Petitioner did not introduce any check stubs or documentary evidence to prove his AWW. He only testified that he was earning \$27 an hour and working 40 hours a week as of the date of the accident. *T.14*. We note that he did not testify that he worked all 52 weeks in the year preceding his accident. Nor did Petitioner testify whether he missed any days or weeks in the previous year and, if so, why. Similarly, Respondent's wage record exhibit does not include any actual wage statements, check stubs, dates or anything to identify the pay periods. *Rx6*. It is simply an "adding machine" calculator printout of a series of varying numbers and calculations with handwritten notations like "AWW," "TTD," "PPD" and "Daily TTD." Respondent relies on this to claim, "Petitioner earned approximately \$20.59/hour" because he "earned \$39,526.50 for the 48 weeks prior to Petitioner's 10/27/21 work injury." *R-brief at 12 (unnumbered)*. However, the Commission finds that *Rx6* only contains a list of unidentified numbers of varying amounts, the source of and accuracy of which is unknown, and that this is not reliable evidence of Petitioner's earnings history. Respondent had access to the actual payroll records, which it chose not to produce to counter Petitioner's testimony regarding his AWW. The Commission, therefore, affirms the Arbitrator's finding that Petitioner's AWW was \$1,080.00.

Finally, we affirm the Arbitrator's award of prospective medical treatment including the fusion surgery by Dr. Matthew Colman as well as any necessary post-operative care pursuant to §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$720.00 per week for a period of 166 weeks, that being the period of temporary

22WC010520

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total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$25,607.21 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 is entitled to a credit of \$18,273.00, as stipulated by the parties, under §8(j) of the Act; 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 shall authorize and pay for prospective medical care and treatment including the fusion surgery by Dr. Matthew Colman, as well as any necessary post-operative care pursuant to §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.

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.

November 24, 2025

/s/ Maria E. Portela

SE/

/s/ Christopher A. Harris

O: 10/16/25

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/s/ Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC010520
Case Name	Claudio Corona v. Woodrige Enterprises, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Paul Seal, Arbitrator

Petitioner Attorney	Brian McManus Jr
Respondent Attorney	Ilir Imeri, Diandra L Abate

DATE FILED: 3/10/2025

/s/ Paul Seal, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 4, 2025 4.14%

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
19(b) ARBITRATION DECISION

CLAUDIO CORONA

Employee/Petitioner

v.

WOODRIDGE ENTERPRISES, INC.,

Employer/Respondent

Case # **22** WC **010520**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Seal**, Arbitrator of the Commission, in the city of **Wheaton**, on **1-7-25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10-27-21**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$56,160.00**; the average weekly wage was **\$1,080.00**.

On the date of accident, Petitioner was **42** years of age, *single* with **4** 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 TPD, **\$43,251.00** for TTD, **\$0.00** for maintenance, \$18,273.00 medical 8(J) credit.

ORDER

The Respondent shall authorize and pay for prospective medical care and treatment including the fusion surgery by Dr. Matthew Colman, as well as any necessary post-operative care pursuant to section 8(a) of the act.

The Respondent shall pay all reasonable and necessary and related medical bills from October 27, 2021, through January 7, 2025, noted on Petitioner's Exhibit 6. Additionally, Respondent shall also pay for all reasonable and necessary medical bills for Petitioner's prospective fusion referred to above and any further necessary post-operative care. Reasonable, necessary related medical to be paid pursuant to section 8(a) of the act.

The Respondent shall reimburse the Petitioner's group health insurers for reasonable, necessary and causally related medical bills from October 27, 2021, through January 7, 2025, noted on Petitioner's Exhibit 6.

The Respondent shall pay Petitioner temporary total disability benefits of \$720.00 per week for 278 1/7 weeks, commencing October 28, 2021, through January 7, 2025, as provided in Section 8(b) of the Act.

Penalties and fees are denied.

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

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

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



March 10, 2025

Signature of Arbitrator

(I) Summary of Claudio Corona's Testimony

Claudio has been working for Woodridge Enterprise. (TR P 14) On October 27, 2021 Claudio was up on a roof and slipped and fell because it was icy injuring his low back. (TR P 15) Immediately after falling off the roof Claudio began experiencing low grade pain. (TR P 15)

In January 2011, Mr. Corona suffered a mild work-related low back injury. (P 15) Mr. Corona was off work for that 2011 low back injury for approximately 6 months and received physical therapy. (TR P 16) No epidurals or surgery were implemented for the injury. (TR. 16)

After the October 27, 2021, injury Claudio first saw Dr. Saldanha from Loyola. (TR P 17 & Pet Ex 1) Loyola did therapy injections. (TR P 17 & 19) Claudio has never been released by any of his treating physicians. (TR P 18)

Claudio was cut off of workers' compensation benefits by Dr. Hsu, a section 12 examiner. (TR P 18) Claudio decided to get a 2nd opinion with spinal expert, Dr. Mathew Colman from Midwest Orthopedics at Rush. (TR P 18 & PET Ex. 4)

Claudio has seen Dr. Colman for 1 year and 3 months and has received a surgical lumbar prescription from Dr. Colman. (TR P 19) Claudio wishes to get the low back surgery because of the amount of low back pain he is experiencing. (TR P 20) Claudio is simply waiting for low back surgical approval.

(II) In support of the Arbitrators decision concerning compensation (F)the Arbitrator finds as follows

The Arbitrator finds Claudio's doctor's credible and persuasive. The first history taken at Loyola is "Lower back pain that travels down the left buttock for 1 weeks after carrying a plywood and slipping but not falling at work". (See Pet Ex 1)

Dr. Colman notes on November 8, 2023

“Claudio Corona is a 43-year-old male who presents to us as a new patient for evaluation of low back pain as it relates to a work-related injury sustained on 10/27/2021. An interpreter accompanies the patient.

This patient had a fall on his knees onto wood when he slipped on the roof and got stuck between plywood sheets. His lower-back pain started radiating into his right lower extremity approximately 1 to 2 months post his injury, causing him to utilize a cane for ambulating. He reported onset of weakness in his right lower extremity while ambulating, anticipating a fall anytime. He characterized his right lower extremity pain as an intermittent pinching pain radiated down to his right thigh, weakness, and mild numbness in his right foot. He denied any symptoms or numbness in his left lower extremity.

Treatment since his injury has consisted of physical therapy, took medications, and 2 spine injections. He attended physical therapy for approximately 15 days as advised and 10 days as advised by another physician whom he visited, and it provided no relief. His 1st injection was in July which provided mild temporary relief, and the 2nd injection was on 09/25/2023, provided significant relief from his pain.

The patient has been off work since his injury and his previous physician provided him with a work note. He has a history of fall in 2012 with no back pain.

ROS”

Loyola and Dr. Colman causally relate the injury. (See Pet # 1&4) Dr. Colman on December 19, 2023 prescribes a L3-S1 laminectomy with L5-S1 TLIF. (See Pet #4)

The Arbitrator finds petitioner's treater's consistent, reliable, persuasive and well known. As such the Arbitrator finds petitioner's current condition of ill being causally related. In addition in accordance with Section (O) orders respondent to authorize the surgery prescribed by Dr. Colman.

III (K) The support of the Arbitrator's decision concerning (K) TTD the Arbitrator finds as follows

Having found causal connection and Dr. Colman persuasive the Arbitrator awards petitioner's TTD from October 28, 2021, through January 7, 2025 or 278 and 1/7 weeks at the applicable TTD rate of \$720 per week.

IV. In support of the Arbitrator's decision concerning (J) Medical the Arbitrator finds

Respondent to pay reasonable, necessary, related medical pursuant to Petitioner's Exhibit 6 and pursuant to section 8(a) of the act less the \$18,273.83 credit. Respondent shall pay reasonable, necessary, related prospective medical, including fusion surgery recommended by Dr. Colman, pursuant to section 8(a) of the act.

V. In support of the Arbitrator's decision Concerning (M) Penalties & Attorney the Arbitrator found as follows:

Penalties and fees are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC012164
Case Name	Amber Toler v. State of Illinois - Southern Illinois University Carbondale
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0472
Number of Pages of Decision	32
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Dane Nelson
Respondent Attorney	Nicole Werner

DATE FILED: 11/24/2025

/s/ Christopher Harris, Commissioner

Signature

24 WC 12164

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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 <u>Accident</u>	☐ Second Injury Fund (§8(e)18)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

AMBER TOLER,

Petitioner,

vs.

NO: 24 WC 12164

STATE OF ILLINOIS,
 SOUTHERN ILLINOIS
 UNIVERSITY CARBONDALE,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability benefits (TTD), prospective medical treatment, permanent partial disability (PPD) benefits, and penalties, and being advised of the facts and applicable law, reverses the decision of the Arbitrator and finds that Petitioner failed to prove that her April 3, 2024 injury arose out of her employment with Respondent. Accordingly, all other issues are moot and the Arbitrator's award of workers' compensation benefits is hereby vacated.

FINDINGS OF FACT

Petitioner began working as a wellness coordinator for the Respondent on June 16, 2022. (T.13.) Her duties included, in part, health education and giving presentations at various buildings on the University campus. (T.14.)

Petitioner testified that she has had five prior right shoulder surgeries and two left shoulder surgeries. (T.11.) While she was doing well following her last shoulder surgery in 2014, she would experience shoulder subluxations but no full-blown dislocations. (T.12.) Petitioner sustained a

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nonwork-related Jones fracture of her left foot on December 10, 2022. She underwent 3 surgeries thereafter with the last having been performed on January 25, 2024. (T.14-15.) She has been on crutches since December 10, 2022 and was advised by her doctor to put more weight on the right foot to compensate for the left foot injury. (T.15-16.) The Respondent provided her with work accommodations due to her condition. (T.16.) Petitioner purchased a mobility scooter to help her move between buildings. (*Id.*) She was able to park her scooter in front of the building where she worked and she would then crutch about 20 steps into the building to her workstation and 20 steps back to her scooter. (T.17.)

Petitioner presented Respondent with no documentation limiting the distance or duration she could crutch. Lisa Carringer testified on behalf of the Respondent. She confirmed that Petitioner never provided any documentation restricting the distance she could crutch. (T.52.)

Beginning in March 2024, Petitioner would begin her morning in the Student Health Services, building 1 and she then worked at the Student Center, building 2 in the afternoon. (T.19.) This required her to crutch an extra 200 feet in and 200 feet out of the building. (T.20.) The extra crutching caused some blisters on both of her hands. (*Id.*)

Petitioner was scheduled to give a presentation on April 3, 2024 in the Student Services Building, building 3. (T.24.) This required her to crutch an extra 150 feet in and 150 feet out of the building. (T.25) Petitioner requested an accommodation for this presentation to reduce her crutching. Jaime Clark, Director of Student Health Services, responded noting that going to the presentation was not in violation of the accommodation provided. (*Id.*)

On April 3, 2024, Petitioner left building 2 and went to building 3 to give the presentation. (T.26.) She stood with her crutches by her side during the presentation. (*Id.*) She left the presentation at its conclusion and had to sit down as her blisters were hurting. (*Id.*) She stood up and began crutching towards the door. (*Id.*) She described her hand pain as feeling like a lighter was held up against her skin. (*Id.*) She stepped down with the crutch and had a painful sensation causing her to jerk up and fall into the handicap door button. (T.27.) She lost consciousness and only remembers being in the back of the ambulance where she was asked about a seizure as she was shaking. (T.28.)

According to the Southern Illinois University police report, Petitioner was lying on the floor upon their arrival. EMS was administering a sternal rub. Her eyes were opening during treatment. The bystanders reported that they had no knowledge of the Petitioner having recurring medical issues. Petitioner became more alert as she was loaded into the ambulance. (PX.2.)

The body camera footage from the incident was admitted as Petitioner's exhibit 1. The footage shows the Petitioner lying on the floor. She was asked about seizures. The bystanders stated Petitioner was shaky before the fall. (PX.1.)

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Per the ambulance report, Petitioner appeared to be having a seizure. Bystanders reported that Petitioner fell to the floor and began shaking. The episode lasted several minutes. She had a history of seizures when she is in extreme pain. A recent ankle surgery, using crutches and pain to her shoulders has been significant in the last few days. She complained of pain to her right shoulder and in the side of her face. She may have dislocated her right shoulder during the fall. (PX.3.)

Petitioner was transported to SIH Memorial Hospital. EMS reported that she was seizing when they arrived. Petitioner reported a history of pain induced seizures. Examination revealed tenderness to both shoulders. There was no acute fracture of the cervical spine and the CT of the brain showed no acute intracranial process. The diagnoses were seizure and acute pain of both shoulders. (PX.4.)

Petitioner presented to Rural Health on April 9, 2024 for examination following a fall and possible seizure. Her history included recurrent dislocation of the shoulder since May 24, 2019, right worse than left. Her prior shoulder history included 6 right shoulder surgeries and 1 left shoulder surgery. She had a recent fall at work and reported having episodes of seizure like activity, which tend to occur when she is in a lot of pain. She has not been fully diagnosed with seizures as her bloodwork was inclusive. She reported dislocating her shoulder during the fall which she managed to pop back in before the x-ray. The assessment included a seizure like episode. Petitioner needed a weeklong EEG for confirmation. She also was diagnosed with a dislocated shoulder that was recurrent and ongoing for many years. She was provided work restrictions. (PX.5.)

A Supervisor's Report of Injury was completed by Shelly Ridgeway ("Ms. Ridgeway") on April 11, 2024. Ms. Ridgeway noted Petitioner was injured while traversing with crutches. According to the report, Brian Beccue stated that the Petitioner passed out. Petitioner reported that she recalled approaching the door, and she tripped and fell. She then regained consciousness in the ambulance. Petitioner reported that both of her shoulders dislocated and she popped them back. It was noted that there were no unsafe acts or conditions which contributed to the accident. (RX.2.)

A Notice of Injury was completed on April 12, 2024. Petitioner reported that she tripped and fell while approaching the door to exit the building. She sustained bilateral shoulder dislocations and right hip and right sided pain. (RX.1.)

In a letter to Petitioner dated April 16, 2024, Gallagher Bassett denied the claim stating that it did not arise out of and in the course of her employment. (PX.10.)

Petitioner was seen by Dr Timothy Farley ("Dr. Farley") of Motion Orthopaedics for bilateral shoulder pain after her fall. Her pain was constant, sharp, aching, stabbing, tingling and throbbing, and between an 8-9 out of 10. She reported weakness, locking, grinding, giving away, catching, loss of motion and popping. During the new patient exam, Dr. Farley noted he has previously treated her for shoulder instability. She was doing very well until she fell and dislocated her shoulder. The diagnosis was bilateral shoulder recurrent instability, both having had multiple surgeries. A CT arthrogram was recommended to better evaluate her shoulder. (PX.6.)

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Petitioner underwent a CT scan of the right shoulder on May 1, 2024 that revealed a 2 cm chronic appearing ossification interior to the screws which may represent a displaced portion of the glenoid versus a large joint body, and mild osteoarthritis of the glenohumeral joint. There was no partial thickness undersurface or full thickness tear of the supraspinatus or infraspinatus tendons. (PX.6.)

Petitioner followed up with Dr. Farley on May 1, 2024. He reviewed the CT scan and recommended physical therapy to stabilize the humeral head within the glenoid adding posterior capsular and subscapular stretching. He also recommended work restrictions. (PX.6.)

Petitioner underwent a physical therapy evaluation on May 7, 2024. She had 5 to 6 prior right shoulder surgeries and 2 surgeries on the left ankle. She was walking on crutches and a boot on her left leg when the current incident occurred. Her right shoulder was just about the same from when it first happened. She reported that her right shoulder feels like it will dislocate whenever she uses crutches. She has had dislocations after the fall. She was to remain off work. (PX.4.)

On May 23, 2024, Petitioner's counsel emailed Respondent demanding payment of benefits. (PX.11.)

Petitioner underwent physical therapy on June 6, 2024. She reported that her shoulder still pops out of the socket and that walking with crutches is difficult as it feels like the crutch will burst through her shoulder. The diagnosis was right shoulder pain. (PX.4.)

Brian Voss ("Mr. Voss") completed a witness report on August 20, 2024. He went to watch Petitioner give the presentation. Prior to the presentation, he noted Petitioner stated she was not feeling well. He checked on her after the presentation and she still did not feel well. He offered to walk her to her car as she could not recall where she parked. He heard Petitioner's crutches fall to the ground as she exited the door. He turned and saw her shaking on the ground and she could not verbalize. A witness advised to roll her onto her side in case she was having a seizure. (RX.4.)

Petitioner was seen by Dr. Farley on August 21, 2024. He recommended physical therapy as the MRI demonstrated no recurrent instability. (PX.6.)

Petitioner was seen by Dr. Jesse Hu ("Dr. Hu"), resident/fellow, of Washington University in St. Louis on August 21, 2024 for her bilateral shoulders. She reported a history of shoulder instability since she was 12 years old and a 2-year history of shoulder instability leading up to the fall, which was followed by a seizure. When she woke, she noted her bilateral shoulders were dislocated. She has a previous seizure history that was well controlled until this event. She underwent the weeklong EEG study and her seizures were currently well controlled on Lamictal. On the right side, she had a bony procedure that, at this point, has failed. Her graft has healed with a fibrous nonunion that is toggling allowing for dislocation events to occur. On the left, there was evidence of glenoid deficiencies which would explain her recurrent instability. If required, he would perform a distal tibial allograft on the right as a revision option for her current Latarjet. He

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would perform a Latarjet of the left shoulder. Her inability to heal seemed quite limited given her fibrous nonunion of her Latarjet. Dr. Jay Keener (“Dr. Keener”) noted that he interviewed the Petitioner with Dr. Hu. Dr. Keener wondered whether the humeral head was sliding forward and hitting the graft causing pain that she confused with instability. He recommended therapy. (PX.12.)

Petitioner was seen by Dr. Farley on October 1, 2024. He agreed with the treatment proposed by Dr. Keener. She was to remain off work. (PX.6.)

Respondent obtained a Section 12 examination from Dr. Michael Nogalski (“Dr. Nogalski”) on October 1, 2024. She reported that she was using her crutches with her right side and had sudden pain as she tried to bear weight. Her hand slipped off the crutch and she fell landing on her right side and rolled onto her left side. She lost consciousness for 8 minutes. She put her shoulder back while in the hospital. Her shoulder has since felt very unstable. Dr. Williams subsequently identified her as having a seizure like disorder but has not formally diagnosed her with a seizure. She is on Lamotrigine and has not had any other episodes since. Dr. Nogalski diagnosed her with preexisting chronic bilateral shoulder instability with multiple surgeries. She also significantly stressed her shoulders with crutch use for about 2 years which was prior to the injury. He stated that abnormal, prolonged crutching can compromise the brachial plexus nerves, which may cause shoulder weakness and dynamic muscular stability loss. She has preexisting generalized joint hyperlaxity. There is no causal connection and she has returned to her baseline. Her findings were essentially subjective and do not support a significant level of instability or sequelae of a specific injury. The act of potentially falling on one’s arm and then rolling over onto the other shoulder and causing injury/dislocation to her shoulder appears to be unrealistic with respect to the mechanism and medical documentation. She was at MMI as of the physical therapy visit on August 29, 2024. (RX.6.)

Petitioner was seen by Dr. Keener on October 23, 2024. She reported that therapy provided temporary relief. She was functioning reasonably well until her injury. She has a nonunion of her glenoid graft, mild subluxation of the humeral head anteriorly, and early arthritis. He suspected she has at least partial insufficiency of her subscapularis. He was unsure of the correct course of action as it was hard to assess her true stability given there was an element of stiffness on her exam. He sensed she had subluxation anteriorly and she was having pain related to that issue. She could consider a revision to a distal tibial allograft with a possible reconstruction of her anterior capsule and subscapularis with an allograft to reverse arthroplasty to fusion. (PX.12.)

Dr. Nogalski authored an updated Section 12 opinion on October 29, 2024. He noted there was absolutely no mention of a shoulder dislocation in the initial ER record and no mention of a specific mechanism of injury. The only clear aggravating factor was her prolonged crutch use, which is a strain on her shoulder. The accident did not cause or aggravate her significant pre-existing condition. She is not a candidate for surgery and could work full duty. (RX.3.)

Dr. Nogalski was deposed November 12, 2024. He testified that Petitioner’s bilateral shoulder condition is not related to her work accident. (PX.13. pg.19.) Her description of the event

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appears to be that of a seizure and not a shoulder dislocation. Crutching with osteoarthritis can cause pain and potentially some inhibition of her shoulder that could be perceived as a feeling of instability. (PX.13. pg.21.)

Petitioner testified that her shoulders are now worse than before the fall. They are loose and her right is significantly worse than her left. (T.31.) Her shoulders dislocate 3 to 5 times a week. (T.33.) Her shoulder pain is an 8 out of 10 on the right and a 7 out of 10 on the left. (*Id.*) She has numbness in her pinky and ring finger on the right and numbness in the pink of her left hand. (T.34.)

CONCLUSIONS OF LAW

To determine whether a claimant's injury arose out of his or her employment, we must first categorize the risk to which the employee was exposed. *McAllister v. Ill. Workers' Comp. Comm'n*, 2020 IL 124848. Illinois courts recognize three categories of risks: (1) risks distinctly associated with the employment, (2) risks personal to the employee, and (3) neutral risks. *McAllister*, 2020 IL 124848, ¶ 38; *Baldwin v. Ill. Workers' Comp. Comm'n*, 409 Ill. App. 3d 472, 478 (2011).

The Commission agrees with Respondent's contention that Petitioner's fall stemmed from a personal risk. "Personal risks include nonoccupational diseases" and "injuries caused by personal infirmities such as a trick knee." *McAllister*, 2020 IL 124848, ¶ 40; *Illinois Inst. of Tech. Research Inst. v. Indus. Comm'n*, 314 Ill. App. 3d 149, 162-63 (2000). It is well-established that falls from epileptic seizures, fainting, or some disease or injury (i.e. the result of something internal or inherent to the claimant) are classified as idiopathic and not compensable. *Oldham v. Indus. Comm'n of Ill.*, 139 Ill. App. 3d 594, 596-97 (1985). The record established that Petitioner suffered an idiopathic seizure. The body camera footage, witness testimony, and medical evidence showed no defect in the area of the fall, that Petitioner appeared shaky and disoriented beforehand, and that her medical history included seizures triggered by pain. The Commission finds sufficient support in the record that Petitioner fell because of a seizure caused by her personal, nonwork-related condition.

An exception to a personal risk applies when the workplace conditions significantly contributes to the injury or exposes the employee to an added or increased risk of injury. *McAllister*, 2020 IL 124848, ¶ 40; *Rodin v. Indus. Comm'n*, 316 Ill. App. 3d 1224, 1229 (2000). "Whether an injury resulting from personal risk arises out of a claimant's employment is determined by whether he was exposed to a risk greater than that to which the general public is exposed." *Rodin* at 1224, 1229. The evidence showed that Petitioner was walking with crutches when she fell. Her use of crutches was due entirely to a personal, nonwork-related condition.

Petitioner claimed that her employment contributed to her injury because the location of her presentation that day required her to crutch a longer distance and the increased pain while crutching caused her fall. The Commission notes that "[b]y itself, the act of walking across a floor

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at the employer's place of business does not establish a risk greater than that faced by the general public." *First Cash Fin. Servs. v. Indus. Comm'n*, 367 Ill. App. 3d 102, 105 (2006). Here, the incident occurred after Petitioner's presentation, while she was crutching to her car. Petitioner identified no workplace condition that increased her risk of injury and the record contained no documentation limiting how far Petitioner could crutch. The Commission finds that the risk of Petitioner falling while walking with crutches, even for a greater distance than normal, was a risk she could have been equally exposed to apart from her employment. Petitioner failed to show that the personal-risk exception applied to her fall, and based upon this, together with the evidence regarding the seizure, the Commission finds her claim not compensable.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on February 4, 2025 is hereby reversed for the reasons stated above. All remaining issues are moot.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of workers' compensation benefits is hereby vacated.

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

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

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.

November 24, 2025

CAH/tdm
d: 11/6/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC012164
Case Name	Amber Toler v. State of Illinois – Southern Illinois University Carbondale
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Dane Nelson
Respondent Attorney	Nicole Werner

DATE FILED: 2/4/2025

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 4, 2025 4.16%

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



February 4, 2025

/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)

Amber Toler
 Employee/Petitioner

Case # **24** WC **012164**

v.

Consolidated cases: _____

Southern Illinois University Carbondale
 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 **Herrin**, on **12/13/24**. 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, **4/3/24**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$40,410.00**; the average weekly wage was **\$777.12**.

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

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

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

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

ORDER

Respondent shall pay the reasonable and necessary medical services outlined in Petitioner's Exhibit 14 incurred on or before August 29, 2024, 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 temporary total disability benefits of \$518.08/week for 21 1/7 weeks, commencing April 4, 2024, through August 29, 2024, as provided in Section 8(b) of the Act.

No prospective medical care, attorney's fees or penalties are awarded.

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

February 4, 2025

PROCEDURAL HISTORY

This matter proceeded to trial on December 13, 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 her employment; 2) the causal connection between the accident and the Petitioner's bilateral shoulder conditions; 3) payment of medical bills; 4) entitlement to prospective medical care to the Petitioner's shoulders; 5) entitlement to temporary total disability (TTD) benefits; and 6) entitlement to fees and penalties.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 32 years old and had been employed by the Respondent as a wellness coordinator. (AX1, T. 13)

The Petitioner testified that she has been ambulating with crutches due having a non-work-related left foot fracture on December 10, 2022, for which she has had three surgeries. (T. 14-15) She said this made it more difficult to do her job, but she was being accommodated and was using a mobility scooter. (T. 16) She said she normally worked in the Student Health Services building, and only had to use crutches about 20 feet to get to and from her scooter. (T. 16-17) She said that, for the most part, she was off her feet for the rest of the day. (Id.) At some point, she was to report to the Student Center building in the afternoons, which added about 400 more feet per day ambulating with crutches. (T. 19-20) She said crutching that extra distance caused blisters on her hands, for which she would wrap her hands and wear gloves. (T. 20) In March 2024, the Petitioner sought additional accommodations to get her scooter to the Student Center to reduce the amount of crutching. (T. 23-24, PX8)

Lisa Caringer, director for the Office for Access and Accommodations and ADA compliance coordinator testified that in December 2023, she met with the Petitioner and discussed accommodations for her foot. (T. 49-50) She stated that the medical documentation she was provided did not contain any specific restrictions on how far the Petitioner could ambulate on crutches, and the accommodations made were regarding the Petitioner using her scooter – giving her extra time to get to and from events and setting up events. (T. 51-53) Ms. Caringer testified that she would address the Petitioner’s concerns as best as she could any time the Petitioner brought an issue to her. (T. 54-55)

Emails between the Petitioner and Ms. Caringer on January 5, 2024, and March 19, 2024, detailed the accommodations for the Petitioner, including allowing buffer time to commute to events, providing parking passes and providing access to the paratransit shuttle. (PX8) On March 19, 2024, the Petitioner asked for access to the paratransit shuttle, stating that she had blistered hands due to extra crutching at the Student Center. (Id.) Ms. Caringer replied that she would call the shuttle service and let the Petitioner know when she could make her weekly subscription schedule. (Id.) She said that since it was not raining or warmer that day, she assumed the Petitioner could use her scooter and charge it while working. (Id.) The Petitioner replied that she did not think the battery in the scooter would allow her to make it over there. (Id.)

On April 3, 2024, the Petitioner was to give a presentation in a third building – the Student Services building – and had sought a one-day accommodation to reduce the amount of crutching, which would have been an additional 300 feet. (T. 24-25) The Petitioner said that request was denied. (T. 25) On cross-examination, the Petitioner acknowledged that she emailed her request to Ms. Carringer at 6:18 p.m. the day before the presentation. (T. 39) The Petitioner explained that she had emailed her supervisor, Shelly Ridgeway, a week prior to the accident. (T. 44) In

emails with Ms. Ridgeway on March 29, 2024, the Petitioner asked Ms. Ridgeway if she was okay with her staying at the Student Health Services building on the afternoon of April 3, 2024. (PX8) She said she had a presentation at the Student Services building later that day, and transit was not able to assist her that day. (Id.) She said she would have to crutch more than her body could handle if she had to go in and out of the Student Center and the Student Services building. (Id.) Ms. Ridgeway replied that she failed to see how it would be much more crutching for the Petitioner to move from the Student Center to the Student Services building as opposed to moving from the Student Health Center to the Student Services building. (Id.) The Petitioner replied that crutching in and out of the Student Center was much longer than her trip to the Student Health Center, and then she would have to crutch to the Student Services building, which was a lot to crutch in general. (Id.) She stated that she had blisters all over her hands and would not be asking for an accommodation if she did not truly need it. (Id.) Ms. Ridgeway forwarded these emails to Jamie Clark, director of Student Health Services. (Id.)

The Petitioner testified that Ms. Clark told her to reach out to Ms. Caringer. (T. 44) In emails on the afternoon of April 2, 2024, Ms. Clark stated that the Petitioner would need to check with Ms. Caringer. (PX8) The next morning, Ms. Clark emailed the Petitioner and stated that presenting at two events was not in violation of the accommodations and told the Petitioner to report to her presentation as scheduled. (Id.)

In her email to Ms. Caringer at 6:18 pm on April 2, 2024, the Petitioner explained that she was having a rheumatological flare-up in her hands, that her hands were blistered from her extra crutching at the Student Center, that she was in pain, and that she had a doctor's note stating that she needed extra time due to rheumatological conditions and a note stating she had physical limitations. (Id.) She said she could not crutch in and out of both places. (Id.) She said that if

she was not covered under her accommodations, she would have to call in sick. (Id.) At 2:41 pm on April 3, 2024, Ms. Caringer emailed back that she was out of the office that morning and didn't get the Petitioner's message. (Id.) She told the Petitioner that if she had limitations with crutching distances due to her condition or other limitations she had not shared, she should have her doctor write a letter clearly stating what her limitation was and how it impacts her. (Id.) Ms. Caringer stated that if the Petitioner needed more accommodations, they could talk about that, but she needed to more about how her disability impacts her. (Id.) The Petitioner testified that she did not receive the reply before going to her presentation. (T. 46) Doctor notes regarding accommodations were not presented as evidence.

The Petitioner testified that on April 3, 2024, she reported to the Student Center, did her job there and went to the Student Services building for her presentation. (T. 26) She said that after the presentation, she was in a lot of pain and was crutching with her weight on her right side when she stepped down with her crutch, felt a raw blister burning sensation, jerked up and fell. (T. 26-27) She said she fell into a free-standing handicap button, lost consciousness and woke up in an ambulance. (T. 27) She said her shoulders were dislocated. (T. 28)

The Petitioner submitted body camera footage of police arriving at the scene that showed the Petitioner lying on the floor in the doorway to the building – apparently unconscious – with police and EMTs attempting to revive her. (PX1) One of the witnesses could be heard stating that right before she fell, the Petitioner was feeling shaky. (Id.) A Southern Illinois University Police Incident Report was consistent with the body camera footage. (PX2, RX3) Officer A. Hisey reported that bystanders who knew the Petitioner said they had no knowledge of the Petitioner having recurring medical issues. (Id.) A Witness Report from Bryana Voss, a coworker, stated that both before and after the presentation, the Petitioner stated she was not feeling well. (RX4)

Ms. Voss stated that she walked to the doors with the Petitioner following her. (Id.) She said she walked through the first set of doors and was getting ready to exit the second set of doors when she heard the Petitioner's crutches fall to the ground. (Id.) She turned around to see what happened and saw the Petitioner on the floor. (Id.) She said she got on the floor next to the Petitioner, who could not verbalize if she was okay and was shaking. (Id.) She said she tried to put water on the Petitioner's head, but she remained in the same state. (Id.)

Jackson County Ambulance Service EMTs responded to the scene. (PX3) Emergency Medical Technician Nikki Preston reported that upon arrival, the Petitioner appeared to be having seizure activity. (Id.) EMT Preston stated that bystanders reported that the Petitioner had fallen to the floor and began shaking, with the episode lasting several minutes before stopping. (Id.) She said that at the time of arrival, the Petitioner's body was relaxed. (Id.) The Petitioner reported to EMT Preston a history of seizure when in extreme pain and that she was experiencing significant pain in the past few days to her shoulders from using crutches. (Id.) She complained of pain to her right shoulder and the side of her face. (Id.) EMT Preston stated that it appeared the Petitioner may have dislocated her right shoulder during the fall, and she had a small red area above her right eye. (Id.)

The Petitioner was transported to the SIH Memorial Hospital Carbondale emergency room, where she reported a history of pain-induced seizures. (PX4) The Petitioner testified that while waiting for imaging at the emergency room, she put her dislocated shoulders back in place herself against the bed. (T. 29) After an examination showing tenderness in both shoulders, cervical and head CT scans and shoulder X-rays, Dr. Osama Aaflaq diagnosed seizure and acute pain of both shoulders and ordered the Petitioner off work until April 10, 2024. (PX4, PX7)

The Petitioner acknowledged having an extensive history of shoulder treatment, including five surgeries on her right shoulder and two on her left shoulder. (T. 11) She said that since her last surgery in 2014, she experienced shoulder subluxations but no full-blown dislocations until the work accident. (T. 11-12) She said she had been diagnosed with hypermobility/laxity in her body. (T. 12-13)

On April 9, 2024, the Petitioner presented to her primary care provider, Nurse Practitioner Jessica Wills at Rural Health, for follow up after a fall and possible seizure. (PX5) The Petitioner reported having episodes of seizure-like activity that tended to occur when she was in a lot of pain. (Id.) NP Wills noted that the Petitioner had not been fully diagnosed with seizures, as her blood work had not confirmed this. (Id.) NP Wills reported that the Petitioner's neurologist mentioned that the Petitioner needed a weeklong EEG for confirmation and had not diagnosed a concussion based on MRI or CT results. (Id.) The Petitioner reported significant pain on the right side of her head and having dislocated her shoulders during the fall that she managed to pop back in before the X-rays. (Id.) In her review of symptoms, the Petitioner reported muscle aches, joint pain, back pain, no muscle weakness and seizures but no loss of consciousness. (Id.)

After an examination, NP Wills diagnosed seizure-like episode, headache and possible concussion and dislocated shoulders. (Id.) In her assessment regarding dislocated shoulders, NP Wills noted that this was a recurrent issue that had been ongoing for many years. (Id.) She encouraged the Petitioner to follow up with her neurologist for further evaluation and EEG testing, advised the Petitioner not to drive until a full evaluation was completed, recommended a follow-up with the neurologist for further evaluation and management of headaches, referred the Petitioner to orthopedics for her shoulders and gave the Petitioner a note for work restrictions. (PX5, PX7) No neurologist records were submitted as evidence at arbitration.

On April 12, 2024, the Petitioner completed an Employee's Notice of Injury in which she stated that she tripped and fell while approaching the door to exit the Student Services building. (RX1) She listed injuries of bilateral shoulder dislocations and pain in her right hip and right side. (Id.) The Petitioner's supervisor, Shelly Ridgeway, completed a Supervisor's Report of Injury or Illness on April 11, 2024, that said the Petitioner told her that as she approached the door, she tripped and fell. (RX2)

On April 16, 2024, the Respondent's insurer sent a letter to the Petitioner stating that her workers' compensation claim was denied because it did not appear that the claim did not appear to have arisen out of and in the course of her employment. (PX10)

On April 24, 2024, the Petitioner presented to Physician Assistant Todd Schmidt at Motion Orthopaedics, where the Petitioner previously treated for shoulder instability. (PX6) She reported that she had done very well with both shoulders until the fall at work. (Id.) She said that when she fell, she reached out and dislocated her right shoulder, then she rolled and impacted her left shoulder, which she felt dislocate as well and go back in. (Id.) She said she was able to relocate the right shoulder on her own after going to the hospital. (Id.) The Petitioner complained of instability and dislocation with the right shoulder if she tried to move it and some numbness and tingling in her fourth and fifth fingers but no numbness or tingling on the left side. (Id.)

After X-rays and an examination, PA Schmidt diagnosed bilateral shoulder recurrent instability and recommended a CT arthrogram. (Id.) Orthopedic surgeon Dr. Timothy Farley issued an off-work slip. (Id.)

The Petitioner underwent the CT scan and saw Dr. Farley on May 1, 2024. (Id.) Dr. Farley stated that the contrast injection for the scan did not entirely make it into the shoulder and actually obscured much of what they were trying to see. (Id.) However, he did see an area where he

believed there still was a bony bridge at the level of the glenoid to the anterior of the bone graft from the prior surgery. (Id.) He said there might be an area where there is a fibrous union. (Id.) He examined the Petitioner, who was protecting her arm from motion, and said she did not really have much in terms of s sulcus sign – a test that evaluates the shoulder joint for instability. (Id.) Dr. Farley recommended physical therapy and stated that if the Petitioner continued to have a problem, he would likely order an MRI with metal suppression techniques. (Id.) He issued work restrictions of no lifting greater than 5 pounds floor to shoulder and no lifting above shoulder for the right upper extremity and no pushing or pulling greater than 5 pounds. (PX7)

On May 9, 2024, NP Wills issued an off-work slip. (PX7)

The Petitioner underwent physical therapy for pain in her right shoulder at SIH Anna Rehab from May 7, 2024, through June 6, 2024, for a total of nine visits. (PX4) Throughout her visits, the Petitioner complained of pain and instability in her right shoulder. (Id.) On June 7, 2024, the therapist recommended additional physical therapy, which Dr. Farley approved that day. (Id.) No further records from SIH Anna Rehab were submitted at arbitration.

On June 26, 2024, the Petitioner returned to Motion Orthopaedics and saw PA Schmidt, to whom she reported no significant improvement with physical therapy and instability episodes two to three times a week. (PX12) PA Schmidt was not sure there was any further surgical intervention that would be of any benefit. (Id.) Dr. Farley continued work restrictions. (PX7, PX12) Dr. Farley again reissued work restrictions on July 10, 2024. (PX7) There was no office visit note accompanying that work slip.

On August 21, 2024, the Petitioner returned to Dr. Farley and stated that her left shoulder felt as though it was dislocating. (PX6) In his notes, Dr. Farley referred to an MRI that demonstrated intact surgical repair without findings consistent with recurrent instability. (Id.)

That MRI report was not submitted at arbitration. Dr. Farley performed an examination and stated that between the MRI and examination, he did not get the sense that the Petitioner was having overt instability within her shoulder. (Id.) He said that perhaps the Petitioner had an issue related to her labrum and recommended physical therapy. (Id.) He reissued work restrictions. (PX7)

That same day, the Petitioner presented to Dr. Jesse Hu, an orthopedic surgical resident at Washington University in St. Louis Physicians, and complained of bilateral shoulder instability. (PX12) She described her prior shoulder treatment and reported bilateral shoulder instability for the past year or two. (Id.) She reported the fall on April 3, 2024, stating that this was followed by a seizure. (Id.) She said that when she woke up, she noted that her shoulders were dislocated. (Id.) She reported a previous seizure history that was well controlled until the accident. (Id.) The Petitioner said she was having severe instability of the right shoulder with dislocation events after minimal provocation – such as when pulling a jug of water out of a fridge a week prior to the visit. (Id.) She noted multiple instability events on the left side. (Id.)

After an examination and a review of X-rays and the right shoulder CT scan, Dr. Hu diagnosed bilateral shoulder instability, right worse than left, and said it was quite possible that her prior right shoulder graft had healed with a fibrous non-union, allowing for dislocation events to occur. (Id.) He stated that on the left, there was evidence of glenoid deficiency, which would make sense with the recurrent instability. (Id.) He recommended six months of physical therapy. (Id.)

The Petitioner also was seen by Dr. Jay Keener, the supervising orthopedic surgeon at Washington University, and told him she fell forward and dislocated her right shoulder with multiple recurrent instability events since. (Id.) Dr. Keener performed an examination, which he said was hard to interpret because she was grossly kyphotic (having an abnormal curvature of the

spine) with poor scapular posture. (Id.) He stated that the etiology of the Petitioner's right shoulder was unclear as the prior bone graft was in the correct position and should have been providing some stability. (Id.) He wondered if the humeral head was sliding forward and hitting the graft and causing pain that the Petitioner was confusing with instability. (Id.) He recommended that she continue therapy. (Id.) He was reluctant to operate on the right side, given what he believed to be incomplete rehab. (Id.) He said he would feel more confident operating if there were more normal movement patterns and a better range of motion. (Id.) Otherwise, he thought she could probably live with the shoulder. (Id.) He said he could consider a distal allograft as a revision procedure, but it would require a second subscapularis takedown, which was not optimal. (Id.) Dr. Keener ordered the Petitioner off work for six weeks. (PX12, PX15)

On September 9, 2024, the Petitioner's physical therapist again recommended continued therapy. (PX6) Records attached to the request showed the Petitioner had a physical therapy visit that day. (Id.) Dr. Farley authorized the services. (Id.)

On October 1, 2024, the Petitioner underwent a Section 12 examination by Dr. Michael Nogalski, an orthopedic surgeon at Orthopedic Associates. (PX 13 Respondent Deposition Exhibit 2, RX6) She described her prior shoulder treatment and stated that by 2014, both of her shoulders were stable. (Id.) She described her foot treatment and said it impacted her shoulders, as she required crutches since December 2022. (Id.) She described the April 3, 2024, accident, stating that she was walking to a presentation on campus, using her crutches. (Id.) She said she had a lot of pain and blisters on her hands. (Id.) She said there was a sudden pain as she tried to bear her weight on her crutches with her right side, her hand slipped off the crutch handle, and she fell. (Id.) She said she landed on her right side and rolled over onto her left side, losing consciousness

for about eight minutes. (Id.) She said that on her way to the hospital, she was able to put her shoulders back in place. (Id.)

The Petitioner said she followed up with her neurologist, who identified her as having a seizure-like disorder but had not formally diagnosed her with a seizure. (Id.) She was taking a seizure medication and had not had any other episodes since being on the medication. (Id.) The Petitioner complained of fairly consistent feelings of instability and estimated that she would dislocate her right shoulder in her sleep about once a month. (Id.)

Dr. Nogalski performed an examination and X-rays and reviewed the right shoulder CT scan and medical records, including physical therapy notes through August 29, 2024. (Id.) Dr. Nogalski diagnosed bilateral shoulder pain, osteoarthritis right greater than left shoulder, status post multiple shoulder surgeries for instability, chronic failure of the right coracoid process attachment from surgery, generalized joint hyperlaxity and generalized muscle weakness in both shoulders. (Id.) He found no objective sign of acute injury or dislocation. (Id.) He noted that the Petitioner had significantly stressed her shoulders with crutch use for about two years and stated that abnormal prolonged crutch use can compromise brachial plexus nerves, which may cause weakness in her shoulders and loss of dynamic muscular stability. (Id.) He said that further investigation of this possibility with electromyography and nerve conduction studies (EMG/NCV) appeared reasonable for both shoulders. (Id.)

Dr. Nogalski opined that there was not a causal relationship between the Petitioner's current condition and reported accident. (Id.) He said that per the physical therapy notes, she appeared to have returned to a baseline. (Id.) He specifically referred to note showing that as of August 29, 2024, the Petitioner reported that she felt about the same and had no dislocations, that she did not feel that she had any more instability in her shoulders than she had previously and that

she felt the stretching helped her as well as the tape holding her shoulders. (Id.) This note was not submitted at arbitration.

As to findings on the day of his examination, Dr. Nogalski said they were essentially subjective in nature and did not support a significant level of instability nor sequelae of a specific injury. (Id.) He said that the mechanism of injury as described – specifically falling and dislocating her shoulders – was not validated by any healthcare provider nor X-rays. (Id.) He said the act of potentially falling on one arm and then rolling onto her other shoulder and causing injury/dislocation to her shoulders appeared to be unrealistic with respect to the mechanism and medical documentation. (Id.)

Regarding medical treatment, Dr. Nogalski stated that treatment to date was reasonable and necessary relative to the Petitioner's subjective complaints, but pain medications were not appropriate for a shoulder condition and not causally connected to the work accident. (Id.) He said that although healthcare providers may consider further treatment due to subjective complaints, he would be cautious with respect to this in the absence of significant objective findings, adding that the Petitioner reporting she was around baseline around the end of August appeared to be incongruous with her current statements regarding her shoulders. (Id.)

Dr. Nogalski stated that the Petitioner appeared to have reached maximum medical improvement as of her August 29, 2024, physical therapy visit. (Id.) He believed the Petitioner could work full duty. (Id.)

The Petitioner also returned to Motion Orthopaedics on October 1, 2024, and saw PA Schmidt, whose examination was unchanged. (PX6) PA Schmidt diagnosed bilateral shoulder pain with early arthritic change and instability. (Id.) He deferred to Dr. Keener for further

treatment and management. (Id.) He ordered the Petitioner off work, as she did not feel like she could do her job because of pain and recommended continued physical therapy. (Id.)

On October 8, 2024, the Petitioner's physical therapist again recommended continued therapy. (PX6) Records attached to the request showed the Petitioner had a physical therapy visit that day. (Id.) Dr. Farley authorized the services. (Id.)

The Petitioner returned to Dr. Keener on October 23, 2024. (PX12) She had been going to therapy, which she said gave her temporary pain relief. (Id.) Dr. Keener was not sure what the right course of action would be, noting that it was "really difficult to assess her true stability" and there was an element of stiffness on exam. (Id.) He got the sense that the Petitioner had subluxating anteriorly and was having pain related to that. (Id.) He said options were doing nothing or considering surgical revision and possible reconstruction. (Id.) The Petitioner did not feel like she was making progress and did not want to live with her shoulder the way it was. (Id.) Dr. Keener stated that he would discuss the case with some colleagues and call the Petitioner to discuss options. (Id.) He ordered the Petitioner off work until further notice and referred her for more physical therapy. (PX15) On October 24, 2024, NP Wells also ordered the Petitioner off work. (PX7)

Dr. Nogalski issued a supplemental report on October 29, 2024, after reviewing additional medical records – including the emergency room reports, additional treatment notes from Motion Orthopaedics and physical therapy and a July 10, 2024, left shoulder MRI. (PX13 Respondent Deposition Exhibit 3, RX7) He stated that the records reinforced his causation opinions from several perspectives. (Id.) First was that there was no mention made of shoulder dislocations within the emergency room encounter on the day of the accident, nor mention of a specific mechanism of injury that would be suspicious of dislocations. (Id.) Second, physical therapy

notes did not document evidence of instability but did document complaints of pain that would be consistent with crutch use, irritation of multiply operated shoulders with osteoarthritis and/or possible some type of neurologic issue. (Id.) Third, the Petitioner did have some evidence of shoulder instability and actually appeared to do well overall with further rehab, which appeared to be her best option for treatment to address her current complaints. (Id.) Last, the only clear aggravating factor in the entire clinical picture was her prolonged crutch use, which was an unfortunate strain on her shoulders. (Id.)

Dr. Nogalski testified consistently with his reports at a deposition on November 12, 2024. (PX13, RX8) He said that for the Petitioner to dislocate two shoulders at once in a fall the Petitioner described is very difficult to reconcile from a medical standpoint, adding that there was no contemporaneous report of shoulder dislocation. (Id.) He said that the most plausible explanation for the Petitioner's shoulder pain or perception of instability would be the Petitioner being on crutches for almost two years. (Id.) He said there also was no later objective evidence of shoulder dislocation or instability, pointing out that Dr. Farley was skeptical about shoulder instability. (Id.)

None of the Petitioner's treating physicians testified.

The Petitioner testified that at the time of arbitration, her shoulders felt terrible and loose, with the right being significantly worse than the left. (T. 30-31) She said they were worse than before her fall and rated her pain at 8/10 on the right and 7/10 on the left. (T. 31, 33) She said dislocations were happening at any time and occurred three to five times per week. (Id.) She said lifting, pushing and pulling were issues, and she was experiencing numbness in her right pinky and ring finger and in her left pinky. (T. 34) She said she is unable to perform exercises for her foot injury. (Id.)

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 and finds several inconsistencies between her testimony and what she reported to healthcare providers and to her supervisors regarding the details of the accident, i.e. jerking her hand from the crutch versus her hand slipping versus tripping. The Arbitrator finds that this does not make the Petitioner wholly unbelievable but necessitates looking at the totality of the evidence in making factual determinations.

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 claimant is at work or while he or she performs reasonable activities in conjunction with his or her employment. *Id.* In this case, the Petitioner's job required her to traverse to, from and within various buildings on campus. She fell as she was leaving a presentation that she was required to perform in a building in which she apparently did not regularly work. These facts are undisputed and do not rely on the Petitioner's credibility. Therefore, the Arbitrator finds the accident occurred in the course of her employment.

The “arising out of” component is primarily concerned with causal connection. *McAllister*, 2020 IL 12484, ¶ 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 mere fact that the claimant's duties took her to the place of injury and that, but for her employment, she would not have been there, is not sufficient, of itself, to support a finding that her injuries arose out of her employment. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 485-86, 546 N.E.2d 603, 137 Ill. Dec. 658 (1989); *Caterpillar Tractor Co.*, 129 Ill. 2d at 63.

Circumstantial evidence can only support an inference which is reasonable and probable, not merely possible. *Mann v. Producer's Chemical Co.*, 356 Ill.App.3d 967, 974, 293 Ill.Dec. 2, 827 N.E.2d 883 (2005); *Stojkovich v. Monadnock Building*, 281 Ill.App.3d 733, 739, 217 Ill.Dec. 35, 666 N.E.2d 704 (1996). Where the evidence allows for the inference of the nonexistence of a fact to be just as probable as its existence, the conclusion that the fact exists is a matter of speculation, surmise, and conjecture, and the inference cannot reasonably be drawn. *Carter v. Azaran*, 332 Ill.App.3d 948, 961, 266 Ill.Dec. 294, 774 N.E.2d 400 (2002). The claimant must show more than a mere possibility of an increased risk of injury from her employment. *Id.*

In the instant case, there are multiple possibilities as to the cause of the Petitioner's fall – seizure, tripping and a reaction to pain from crutching. Although tripping is referred to in the employee and supervisor reports, there is no other mention of tripping nor any other evidence as to how or on what the Petitioner would have tripped. Therefore, tripping does not rise to being a probable cause of the fall.

A seizure and a reaction to pain while crutching are personal risks, idiopathic in nature. An idiopathic fall is a type of accident which results from an internal, personal weakness of the claimant. *Stapleton v. Industrial Comm'n.*, 282 Ill. App. 3d 12, 16 (1996). An injury resulting from an idiopathic fall arises out of the employment only where the employment conditions significantly contributed to the injury by increasing the risk of falling or the effects of the fall. *Id.*

As to whether the Petitioner's fall was caused by a seizure, the Arbitrator finds no evidence that makes this more than a mere possibility. There were no reports nor testimony from the Petitioner's neurologist that would make this scenario any more probable.

The Arbitrator finds the fall being caused by a reaction to pain from crutching to be the most probable cause of the Petitioner's fall. Although the Petitioner made inconsistent statements after the accident as noted above, she consistently reported both before and after the accident that increased crutching was causing her pain. This, in and of itself, is idiopathic. However, the Arbitrator considers excessive crutching on the day of the accident to be an employment condition. The emails prior to the accident show that the Respondent was working with the Petitioner to reduce the amount of crutching she had to perform in doing her job duties. In the week or so before the accident, the Petitioner sought accommodations for the additional crutching she had to perform due to having to go to a different building for a presentation on the day of the accident. This did not occur, and the Petitioner's work assignments necessitated her to crutch farther than normal. The parties pointed fingers at each other as to who was to blame – a determination the Arbitrator does not need to make, as negligence is not a consideration under the Act.

Therefore, the Arbitrator finds the employment conditions – the additional crutching the Petitioner had to perform on the day of the accident – increased the risk of falling, and, thus, significantly contributed to the injury to the extent that the fall arose out of her employment.

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

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n*, 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.*, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

The Petitioner suffered injuries in the fall that necessitated her being taken by ambulance to the emergency room, seeing her primary care provider, undergoing diagnostic testing and being referred to specialists.

As to the Petitioner's current condition, none of her treating physicians gave a causation opinion nor explained why their diagnoses may have been related to the accident. There was no testimony that the accident aggravated or accelerated her pre-existing shoulder condition. Dr. Nogalski opined that the Petitioner's shoulder condition was not causally related to the accident

and explained his findings. He stated that the Petitioner returned to her baseline condition by August 29, 2024. The Arbitrator relies on Dr. Nogalski's opinions.

Therefore, the Arbitrator finds that the Petitioner's current bilateral shoulder condition is not 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).

Dr. Nogalski opined that treatment had been reasonable and necessary and that the Petitioner returned to baseline on August 29, 2024. Based on this and the findings above regarding causation, the Arbitrator finds the expenses contained in Petitioner's Exhibit 14 incurred on or before August 29, 2024, to be reasonable and necessary and related to the work injury. Therefore, the Arbitrator orders the Respondent to pay these medical expenses 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).

Based on the causation findings above and in reliance on Dr. Nogalski's opinion that the Petitioner reached baseline as of August 29, 2024, the Arbitrator finds that the Petitioner is not entitled to prospective medical care.

Issue (L): 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, the off-work slips from the Petitioner's treating physicians and the opinions of Dr. Nogalski, the Arbitrator finds that the Petitioner was entitled to TTD benefits from April 4, 2024, through August 29, 2024.

Issue (M): Should penalties or fees be imposed upon Respondent?

The Petitioner filed a petition for attorney fees and penalties under Sections 16, 19(k), and 19(l) of the Act for Respondent's nonpayment of TTD and medical benefits. The intent of sections 16, 19(k), and 19(l) is to implement the Act's purpose to expedite the compensation of industrial workers and to penalize employers who unreasonably, or in bad faith, delay or withhold compensation due an employee. *Avon Products, Inc. v. Industrial Comm'n*, 82 Ill. 2d 297, 301 (1980). Awards under section 16 and 19(k) are proper only if the employer's delay in making payment is unreasonable or vexatious. *McMahan v. Industrial Comm'n*, 183 Ill. 2d 499, 504-05 (1998). That is, the refusal to pay must result from bad faith or improper purpose. An award under section 19(l) is more in the nature of a late fee, so an award under that section is appropriate if an

employer neglects to make payment without good and just cause. *McMahan*, 183 Ill. 2d at 515; *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶15. The employer has the burden of showing that it had a reasonable belief that the delay was justified. *Roodhouse Envelope Co. v. Industrial Comm'n*, 276 Ill. App. 3d 576, 579 (1995).

The Respondent's refusal to pay benefits was based on a dispute as to whether an accident occurred in the course of and arising out of the Petitioner's employment. The Arbitrator finds this dispute was not unreasonable nor in bad faith.

Therefore, the Arbitrator declines to award fees or penalties.

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	20WC006147
Case Name	Zachary Boyle v. Springfield Police Department
Consolidated Cases	20WC006148 20WC006149
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0473
Number of Pages of Decision	21
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Sarah Noll
Respondent Attorney	L. Robert Mueller

DATE FILED: 11/24/2025

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZACHARY BOYLE,

Petitioner,

vs.

NO: 20 WC 6147

SPRINGFIELD POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

On 11/7/2024, this claim, 20 WC 6147, consolidated with 20 WC 6148 and 20 WC 6149, proceeded to arbitration pursuant to Section 19(b) of the Act. The disputed issues at arbitration were identical in all three claims and comprised of causation, medical expenses, temporary benefits, penalties and attorney fees, credit and vocational rehabilitation. The Arbitrator issued separate decisions for each claim number. The Arbitrator found that Petitioner's undisputed injuries in 20 WC 6148 and 20 WC 6149 involved subsequent carbon monoxide exposures after Petitioner's initial exposure on 11/19/2019, the subject of 20 WC 6147. "Petitioner had already sought medical attention before the two subsequent exposures. With that in mind, the Arbitrator is writing his decision in these consolidated carbon monoxide cases under 20WC006147." Petitioner timely filed a Petition for Review in these three claims.

The Commission, with due notice given to the parties and after full consideration of the issues on Review, specifically, medical, temporary and vocational rehabilitation benefits, as well as penalties and attorney fees, and being advised of the facts and applicable law, modifies the decision of the Arbitrator in 20 WC 6147, and otherwise affirms and adopts the decision of the Arbitrator which is attached hereto and made a part hereof. The Commission also remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

Causal Connection and Medical Benefits

The Arbitrator determined that a causal relationship existed between Petitioner's condition of ill-being and the carbon monoxide exposures, but only until the 9/29/2023 Section 12 examination by Dr. Werner, a board-certified neuropsychologist and Respondent's medical expert.

The Arbitrator found Dr. Werner persuasive and ordered Respondent to pay for all related medical bills incurred through 9/29/2023 pursuant to the fee schedule. Respondent was not responsible for any medical bills for services incurred after that date.

Dr. Werner testified that Petitioner sustained some acute transient symptomatology after his carbon monoxide exposures at work, including headache, nausea and dizziness, but she found no objective evidence of an acquired neuropsychological impairment or cognitive disorder. Dr. Werner agreed that the exposure to carbon monoxide exacerbated Petitioner's pre-existing psychological symptoms (namely, adjustment disorder with mixed anxiety and depression), but she believed the exacerbation only persisted until the gap in Petitioner's treatment in February 2021 (not September 2020 as she had mistakenly indicated). Dr. Werner testified that Petitioner's pre-existing history of depression raised the risk of developing bouts of depression in the future regardless of any exposure to carbon monoxide. She further noted that Petitioner had additional stressors with regard to loss of employment and family life.

The Commission finds Dr. Werner's opinions inconsistent with the overall testimony and evidence, if not arbitrary.

After Petitioner's initial hospitalization following his carbon monoxide exposure, he saw Dr. Varney (his primary care physician) and Dr. Einspahr (a psychiatric resident who worked with Dr. Varney) and reported changes in his mood and behavior, including intrusive thoughts of suicide, that he said were different from his previous experiences with depression. Petitioner testified to these changes at arbitration, and his testimony was corroborated by the testimony of his wife and mother. Dr. Einspahr documented that Petitioner never had psychotherapy in the past, he also had no past psychiatric hospitalizations and no previous suicide attempts. Petitioner's prior medical records confirmed this. Dr. Varney had prescribed medication for Petitioner's depression prior to the 11/19/2019 exposure, but Petitioner was weaned off the medication by 2/4/2019. Respondent's Exhibit 1 also had prior medical records from Springfield Clinic related to Petitioner's treatment for depression. There were 10 visits between 11/14/2012 and 4/27/2018 which showed that Petitioner had good and bad days with his depressive symptoms. His physicians prescribed medication and recommended a psychiatry evaluation, but there is no indication that Petitioner underwent that evaluation.

Dr. Einspahr attributed Petitioner's worsening depressive symptoms to his carbon monoxide exposure. Dr. Varney also acknowledged that Petitioner's presentation was different and his mood was worse after the exposure. He believed that the carbon monoxide exposure was a contributory factor, but admitted that he was not well-versed about how carbon monoxide exposure could contribute to mood disorder. Dr. Killian, a board-certified psychiatrist, similarly indicated in his 10/19/2022 Section 12 report that not all of Petitioner's current problems were related to the carbon monoxide exposure but that a significant portion of his cognitive and emotional problems started after the repeated carbon monoxide exposures. Dr. Killian opined that Petitioner's exposure had aggravated his depression and anxiety. He reached this conclusion after performing his own tests and reviewing Petitioner's prior history related to depression and anxiety, Petitioner's treatment records to date, the deposition transcripts of Drs. Varney and Best, and the medical literature. Dr. Killian was not an expert in neuropsychiatry, but he stated that his research

supported Dr. Best's (who is a neuropsychiatrist and is board-certified in psychiatry) testing and treatment recommendations.

Dr. Best testified that his practice focused on treatment-refractory neuropsychiatric illness, and he treated people with treatment-resistant depression, anxiety and chemical insult to the brain such as carbon monoxide poisoning. Dr. Best first evaluated Petitioner on 5/31/2022, and thereafter performed mental status and biochemical testing, obtained SPECT and EEG studies, and completed a pharmacogenomic profile. Dr. Best testified that Petitioner presented with affective disorder, meaning the symptoms were of an emotional variety, and contributory factors were toxic effect of carbon monoxide and an inborn error of metabolism. He also assessed Petitioner with autoimmune encephalopathy. Dr. Best testified that these were common whenever the brain is injured.

Dr. Best did not review any medical records related to Petitioner's depression prior to November 2019, but Petitioner told him about it and this history was also reviewed during Dr. Best's deposition. Dr. Best believed that everything worsened and Petitioner's treatment for refractory depression and anxiety started after the carbon monoxide exposure. Petitioner had become less and less functional and was no longer responsive to standard treatment. Dr. Best added that carbon monoxide was but one cause of Petitioner's condition. He confirmed that his opinions were within a reasonable degree of medical certainty.

The Commission finds that the preponderance of the evidence, especially Dr. Killian's and Dr. Best's opinions, outweigh Dr. Werner's opinions which were based in part on Petitioner's pre-existing depression, other stressors in life and the gap in treatment starting in February 2021. Drs. Killian and Best agreed that the carbon monoxide exposure was a factor in Petitioner's overall presentation. The medical evidence also demonstrated that when Petitioner returned to treatment on January 28, 2022, he saw Dr. Pandey (who was in the Psychology department at SIU Medicine). The visit note documented that Petitioner had stopped following up for his mental health as he felt frustrated and weaned himself off the medication. He returned to treatment because his mental state had worsened in the last six months. Dr. Killian and Dr. Best responded that brain dysfunction made it difficult to self-regulate, and Dr. Werner admitted that depression waxed and waned. There is nothing in the medical evidence indicating that Petitioner's work injury was no longer a factor.

The Commission further notes that the leading physicians providing causation opinions in this case came from different specialties, but each were capable of providing opinions applicable to Petitioner within their niche. In weighing the testimony and evidence, the Commission finds that no one found Petitioner to be malingering, the physicians agreed as to Petitioner's pre-existing depression and that his work-related carbon monoxide exposures contributed to some form of mental injury. Dr. Werner's opinions do not automatically set aside Dr. Best's opinions as any conclusions were in relation to the specific studies that they conducted. In fact, Dr. Werner did not agree or disagree with Dr. Best's opinions or treatment recommendations. She repeatedly testified that she wanted to know more information about how he rendered his opinions, and she did not review Dr. Best's deposition transcript. The Commission finds that Dr. Werner failed to rebut Dr. Best's testimony, opinions and treatment recommendations.

Based on the foregoing, the Commission finds that Petitioner's repeated carbon monoxide exposures at work remain a causative factor in his current condition of ill-being involving treatment-refractory depression, anxiety and behavioral instability. The Commission also finds Dr. Best's treatment as of the arbitration date work-related. This includes hyperbaric oxygen treatments, transcranial magnetic stimulation, Ketamine-assisted psychotherapy, oral medication, nutrition-based management and psychiatric management/consultation. The Arbitrator's decision shall be modified accordingly.

Temporary Benefits

By the Request for Hearing form and Petitioner's representation at arbitration, he was requesting temporary total disability (TTD) benefits from 9/8/2020-1/1/2021 and wage differential or maintenance benefits from 8/15/2021-12/31/2023. Petitioner also acknowledged that TTD benefits were paid 11/19/2019, 7/31/2022-8/10/2022 and 1/15/2023-10/7/2023. These payments were reflected in Respondent's Exhibit 5 and totaled \$32,791.96. The Arbitrator determined that Petitioner was not entitled to any further TTD benefits and indicated that benefits should have ended on 8/27/2023. According to Respondent, this date corresponded with the date Petitioner started college, but the arbitration record does not reveal any testimony or evidence to corroborate this exact date. The Arbitrator also found that Petitioner was not entitled to any temporary partial disability (TPD) benefits or maintenance benefits.

The Commission first considers Petitioner's request for TTD benefits from 9/8/2020-1/1/2021.

The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force. (Citation omitted). Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force. *Interstate Scaffolding, Inc. v. Ill. Workers' Comp. Comm'n*, 236 Ill. 2d 132, 146 (2010).

Stated differently, "an employee has the burden of showing not only that he is not working, but that he *cannot* work." *Id.* at 148; see also *Freeman United Coal Mining Co. v. Indus. Comm'n*, 318 Ill. App. 3d 170, 177 (2000).

The Commission agrees with the Arbitrator's findings on this issue, particularly that Petitioner's decision to stop working for Respondent on 9/8/2020 was not at the advice or recommendation by any physician. There was a note from Petitioner's visit with Dr. Einspahr on 9/16/2020 that documented that Petitioner had resigned because his job was significantly affecting his mood and he had contemplated suicide multiple times. Notwithstanding this report, Dr. Einspahr did not take Petitioner off work or give him any work restrictions. The next time Petitioner sought treatment was on 2/17/2021. The Commission finds that Petitioner was not entitled to any TTD benefits during the claimed period of 9/8/2020-1/1/2021.

This reasoning is also applicable to the second claimed period of 8/15/2021-12/31/2023. As of 8/15/2021, Petitioner was not off work and did not have work restrictions from any physician. Dr. Varney expressed at his deposition on 4/26/2022 that a change in occupation was in Petitioner's best interest for his mental health, but he did not testify that Petitioner could not work or could only work with restrictions at that time. Dr. Killian eventually indicated on 10/19/2022 that Petitioner was substantially impaired from full-time work because of his mood instability, behavioral disinhibition and cognitive problems, but that he was capable of working his current, part-time job as a nutrition coach. Under these facts, Petitioner was not entitled to TTD benefits because he was capable of working and was in fact working.

The Commission notes that Respondent nonetheless paid Petitioner TTD benefits from 7/31/2022-8/10/2022 and 1/15/2023-10/7/2023, and stopped benefits after receiving Dr. Werner's Section 12 report. The Commission finds that this period corresponded with Petitioner's treatment with Dr. Best. Although Dr. Best did not take Petitioner off work or give him restrictions, Petitioner testified to and Respondent acknowledged that Petitioner (who lived in Springfield, Illinois) had to stay overnight in the Chicago area and could not work while undergoing treatment with Dr. Best. The Commission does not disturb the parties' agreement with respect to these benefits, but modifies the Arbitrator's decision to find that Petitioner's entitlement to TTD benefits ended on 9/15/2023, not 8/27/2023.

The evidence demonstrated that Petitioner's condition stabilized by 9/15/2023 and he was at maximum medical improvement (MMI). Petitioner's testimony and his medical records from Dr. Best's office support this finding. After 9/15/2023, Petitioner was no longer receiving multiple treatments every month. He testified that there were times when he could decompensate sooner than usual, but according to the records, Dr. Best made no significant changes to Petitioner's treatment recommendations or work status. The Commission further notes Dr. Best's 9/20/2024 correspondence which stated that Petitioner only needed occasional treatment for maintenance of his currently compensated state even though he believed Petitioner was not yet at MMI. The Commission finds Dr. Best's statement regarding MMI contradictory and not supported by the underlying evidence.

The Commission also affirms the Arbitrator's denial of TPD benefits. The Act states that "[w]hen the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits." 820 ILCS 305/8(a). Petitioner may have been entitled to some TPD benefits commencing on 10/19/2022, based on Dr. Killian's opinion that Petitioner was substantially impaired from full-time work at the time. He also believed that Petitioner could not perform his police duties safely and effectively unless his symptoms substantially improved. Dr. Killian thus recommended the treatment outlined by Dr. Best. The Commission finds, however, that Petitioner's testimony, and what was possible to glean from the arbitration record, was neither clear nor consistent with regard to when he worked part-time, and for whom, and also how much he earned, when did he earn it and for whom. The lack of information and clarity makes it impossible to properly calculate and award TPD benefits.

The Commission further affirms the Arbitrator's denial of maintenance benefits as he was not engaged in a prescribed vocational rehabilitation program at any time, and there was no

competent evidence related to his alleged self-directed job search. *W.B. Olson v. Ill. Workers' Comp. Comm'n*, 2012 IL App (1st) 113129WC, ¶ 39; *Roper Contr. v. Indus. Comm'n*, 349 Ill. App. 3d 500, 506 (2004); see also *Euclid Bev. Ill. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC, ¶ 30. Petitioner claimed that he was entitled to maintenance benefits as of August 2023 when he enrolled in school. He also stated, albeit confusingly, that he began a job search around this time, but "once I had confirmed I was going back to school, I knew that I couldn't - - there was no way I could balance a job and school. So, I wasn't able to find any work in this period." (T.76). Petitioner clarified that between May and December of 2023, "I was not able to look for jobs because I was spending 8 to 10 hours a day on homework and studying." (T.78).

The Commission finds that Petitioner's decision to attend college, following the intensive portion of his treatment with Dr. Best, was not part of any prescribed vocational rehabilitation program. Petitioner's own vocational expert, Mr. Patsavas, testified that he had no input on Petitioner's decision. Likewise, Petitioner's alleged job search was on his own initiative. There was no updated medical evidence about Petitioner's condition and/or his ability to work until Dr. Best's 9/20/2024 report wherein he stated that Petitioner could explore vocational options, and advised Petitioner to avoid all occupations related to policing, corrections, or being placed in life/death situations. Even then, Petitioner was not in any prescribed vocational rehabilitation program and there is no evidence of a self-directed job search that would have triggered Respondent's obligation to provide maintenance benefits.

The primary goal of rehabilitation is to return the injured employee to work and Petitioner was working part-time as of the arbitration date. *Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 2019 IL App (2d) 180090WC, ¶ 29. He also admitted that he had the existing skills that enabled him to find employment, but maintained that his inability to return to law enforcement and his current credentials prevented him from earning more. The Arbitrator nevertheless found that Petitioner was not entitled to vocational rehabilitation services and the Commission affirms the Arbitrator's decision. The Commission further emphasizes that Dr. Best never precluded Petitioner from working full-time and Mr. Patsavas provided no opinion as to whether vocational rehabilitation would increase Petitioner's earning capacity. In total, Petitioner is not entitled to maintenance benefits.

Finally, Petitioner's claim for wage differential benefits is premature at this time as this case was heard pursuant to Section 19(b) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2025 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical treatment, including the treatment by Dr. Best, that is evidenced in Petitioner's Exhibit 21. The treatment shall be limited to that which is required to cure or relieve Petitioner from the effects of his carbon monoxide exposures on 11/19/2019, 12/5/2019 and 1/24/2020. Said payments shall be made consistent with this Decision and pursuant to Sections 8(a) and 8.2 of the Act.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

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

November 24, 2025

CAH/pm
O: 11/6/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC006147
Case Name	Zachary Boyle v. Springfield Police Department
Consolidated Cases	20WC006148; 20WC006149; 21WC003303; 21WC003304;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision Remand Arbitration
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Sarah Noll
Respondent Attorney	L. Robert Mueller

DATE FILED: 2/7/2025

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 4, 2025 4.16%

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)

Zachary Boyle

Employee/Petitioner

v.

Springfield Police Department

Employer/Respondent

Case # **20** WC **006147**

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 **11/07/24**. 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 **Vocational Rehab**

FINDINGS

On **11/19/19**, 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.

In the year preceding the injury, Petitioner earned **\$64,421.24**; the average weekly wage was **\$1,238.87**.

On the date of accident, Petitioner was **28** years of age, *married* with **1** dependent child.

Respondent shall be given a credit of **\$32,791.96** for TTD, **\$0** for TPD, **\$0** for maintenance and **\$0** for other benefits, for a total credit of **\$32,791.96**.

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

ORDER

The Petitioner is not entitled to further TTD benefits, maintenance benefits, or TPD benefits.

The Petitioner is not entitled to vocational rehabilitation services. The statement for services from David Patsavas is not Respondent's responsibility.

Respondent is entitled to credit against future benefits for 6 weeks of TTD paid from 8/27/23 to 10/07/23, \$4,955.16.

The causal relationship between Petitioner's condition of ill-being and the carbon monoxide exposures extends until the 9/29/23 evaluation by Nicole Werner. Respondent is responsible for all related medical bills incurred up until that date pursuant to the fee schedule. Respondent is not responsible for any medical bills for services incurred after 9/29/23.

The Petitioner is not entitled to penalties and attorney fees. Respondent is not responsible for any costs with regard to Petitioner preparing for trial.

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

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

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

Edward Lee
Signature of Arbitrator

February 7, 2025

STATEMENT OF FACTS

Petitioner is 33 years old with a birth date of 5/16/91. He is married with two children (Tr. 7). He has an Associate's Degree from Lincoln Land Community College (Tr. 8). He then later earned a second Associate's Degree (Tr. 9). He was hired as a patrol officer for the City of Springfield in April of 2017 (Tr. 12). He was involved in general police work and would write up investigative reports. Petitioner testified that he needed a very strong memory and the ability to concentrate and focus (Tr. 14). Dealing with people as a police officer could be stressful. The night of his first exposure, he got one of the worst headaches of his life with nausea and vomiting (Tr. 15). This was on 11/19/19 and he was taken to Memorial Medical Center. He was tested on a device to detect carbon monoxide in the blood (Tr. 16). On 12/05/19, he had very similar symptoms. He went to the hospital and they ran the same tests. Once again, he had a high enough level of carbon monoxide to stay for treatment (Tr. 23). He was put on very high flow oxygen for several hours until the level came down. He had a very severe headache, nausea, and dizziness (Tr. 24). On 1/24/20, he had another carbon monoxide exposure (Tr. 29). It was almost identical to the first two with the headache, nausea and dizziness. They again tested for carbon monoxide. The nurse told him that the test revealed a level that was lower than the number where they would make him stay and be treated (Tr. 30). Petitioner testified that meter in his vehicle continued to have carbon monoxide positive readings up through March of 2020. (Tr. 31-32).

Petitioner testified that after the 11/19/19 exposure, he started having increased severe mood swings which was uncharacteristic. He would break down crying out of nowhere. He began having pretty significant suicidal ideation and a level of paranoia when he went to work. He had a loss of interest in basically anything that he otherwise would have enjoyed. There were very, very noticeable changes mental health-wise (Tr. 39). Following the ER visits, he did follow up with SIU Physicians for treatment with Dr. Varney and Dr. Einspahr. Dr. Varney is his primary care doctor. Dr. Einspahr was either a resident or med student doing a rotation with Dr. Varney (Tr. 40). After the first exposure, he saw Dr. Einspahr on 12/04/19, 1/29/20, 3/11/20, and 9/16/20 (Tr. 99). On 2/17/21, he saw a new resident working with Dr. Varney. He then had a telephone conference visit with Dr. Pandey on 1/28/22. He went back to Dr. Pandey in early May of 2022 and asked for a referral to Dr. Best (Tr. 100). In between those dates, he saw Dr. Einspahr a couple of times. She was in a counseling-type situation (Tr. 101).

Petitioner was in contact with Dr. Best on 5/31/22 via Zoom. *The Arbitrator finds it noteworthy the Dr. Best's opinions are based on what the Petitioner told him and not the medical records/history* (Deposition, PX 7. Pp 33, line 16 and pp38-42). *This was also noted by Dr. Killian* (PX 6, pp 9-10)

Petitioner started treatment with Dr. Best as of 7/31/22 and that continued up through 8/10/22 (Tr. 102). At that time, he had hyperbaric treatments as well as the other ones (Tr. 102-103). Petitioner indicated that in addition to the hyperbaric chamber, his treatment consisted of a transcranial magnetic stimulation with ketamine as an anesthetic. There was also IV nutrition (Tr. 62). Dr. Best stopped treatment at that time because he had not gotten paid. Subsequently, the Respondent agreed to go ahead and pay for his treatment, but Dr. Best refused to take the reductions based on the fee schedule. (Tr. 103). Petitioner and his family agreed to pay Dr. Best the full amount of his charge. The hyperbaric treatment was paid in advance and the other treatments were paid at the time of the visit (Tr. 104-105).

The Respondent at the 11/02/22 hearing agreed to provide benefits including travel to see Dr. Best for the treatment. Petitioner testified that his mental health symptoms were not good and his memory was very poor during this time. His concentration and ability to process information was poor. He had very violent outbursts to certain triggers (Tr. 58). He did not have any of these types of problems prior to the carbon monoxide exposures starting in November of 2019 (Tr. 61). Petitioner indicated that five days a week, Monday through Friday, he would be in a hyperbaric chamber for 90 minutes. Then, on Tuesdays, Thursdays and Sundays he

would have a treatment consisting of the transcranial magnetic stimulation with ketamine as the anesthetic (Tr. 62). The hyperbaric treatment stopped as of 3/24/23 (Tr. 105, 107). The other treatment continued into the summer of 2023 (Tr. 105). He began this treatment as of 1/15/23 and was there for 14 full weeks of treatment (Tr. 106). The hyperbaric went from 1/16/23 to 3/24/23 (Tr. 107). After the 14 weeks, his treatment was reduced gradually (Tr. 108-109). The visits were sufficiently tapered down by the fall of 2023 that he was able to enroll in school (Tr. 109). In late August of 2023, he started classes at University of Illinois at Springfield (UIS) and went that fall, the spring of 2024 and summer school in 2024 (Tr. 110).

Petitioner testified that the treatments with Dr. Best were very helpful. He had a significant reduction in his depression, the suicidal ideation, the explosive episodes, but not big improvements in cognition (Tr. 63-64). With regard to his enrollment in late August of 2023, Petitioner indicated he started in the exercise science track leading toward physical therapy. He very quickly realized that he was not enjoying the classes. Additionally, his wife indicated that she would leave him if he put her through five more years of school (Tr. 66). He is now in a program called Liberal Studies (Tr. 68).

Petitioner testified that after he resigned from Respondent, he started a new job on or about 1/01/21 with a company in Kansas, doing it remotely. It was a nutrition coaching situation. He also started working at a local gym, Carpe Diem Crossfit, which is physical fitness (Tr. 70). In 2021, Petitioner made \$33,721.50. In 2022, he made \$21,633.80. In 2023, he made \$131.00 (Tr. 271). Recently, he obtained a part-time job at Carpe Diem Crossfit (Tr. 74).

Petitioner testified that in August of 2023 with school, he did not look for work because of his homework and studying (Tr. 78). Just this fall, he has been applying for jobs that are investigative in nature (Tr. 77). Petitioner testified that he is not able to return to police work because of his cognitive issues. He also noted that he decompensates. He did not think it was safe for him to be in that line of work (Tr. 83). He noted that his emotional responses to certain stimuli might put himself and anyone he was with at risk (Tr. 84). Petitioner testified that it takes him a considerable amount of time to read and comprehend things, an issue he never had before (Tr. 88).

Petitioner testified that he plans to continue to work with David Patsavas and Dr. Best to locate a job to accommodate his processing, memory and emotional needs after reaching a pretty high level of improvement with Dr. Best's treatments (Tr. 92).

The testimony from Petitioner's wife, Hannah Boyle, and his mother, Diane Boyle, essentially confirmed Petitioner's testimony regarding the problems and symptoms he had and his improvement with treatment for those.

Dr. Andrew Varney's deposition was taken on April 26, 2022. He is a board certified general internist (PX8, p. 6). On 12/04/19, he saw Petitioner for a squad car exposure to carbon monoxide that occurred on 11/18/19 (11/19/19). Petitioner was complaining of nausea, vomiting, abdominal cramping, and dizziness and was taken to the emergency room. The doctor indicated that the ER found a carbon monoxide level of 10 and after a couple hours of oxygen, the level had dropped to 3.6 (PX8, p. 11). Petitioner was complaining that his mood disorder was more difficult to manage following the exposure to carbon monoxide. The doctor indicated that this got advanced mostly because of repeated exposures (PX8, p. 12). Dr. Varney indicated that on 12/05/19, Petitioner again had an elevated carbon monoxide level. The doctor indicated that Petitioner presented again on 5/10 with a headache (PX8, p. 13). No carbon monoxide level was assessed at that time. The doctor indicated that his visits closely followed the exposures. Petitioner indicated that his mood was worse. The resident Dr. Varney was working with at the time was Dr. Einspahr. Dr. Einspahr knew of an association between carbon monoxide exposure and worsening mood (PX8, p. 14). *Dr. Varney indicated he had not been as well-versed*

about carbon monoxide exposure contributing to mood disorder (PX8, p. 14-15). Nevertheless, Dr. Varney felt that the exposures to carbon monoxide would have aggravated Petitioner's depression (PX8, p. 15). The doctor added that in addition to mood disorders, depression, anxiety and panic attacks are listed (PX8, p. 16). When Petitioner returned in 6 to 8 weeks, he reported that his symptoms had not progressed to the point he found satisfactory. Some of his passive death wishes were less. However, the patent energy and clearness of cognitive status were not exactly what he felt they could be (PX8, p. 17-18). As of 12/04/19, Petitioner was given Fluoxetine, an anti-depressant working on Serotonin re-uptake inhibition (PX8, p. 18). As of that date, Petitioner had no particular plan, suicidal ideations (PX8, p. 21). Thoughts were intrusive and come and go (PX8, p. 21-22). On 1/29/20, he had not had any suicidal ideations. He had low energy. He felt like he was sleeping too much. He advised of the other two exposures on 12/05/19 and 1/22/20 (PX8, p.23). As of 1/29/20, the Fluoxetine dosage was increased. Petitioner returned on 3/11/20 (PX8, p. 25). As of that date, Petitioner's wife thought his mood was improving. Petitioner indicated he felt like he was spending more time napping. He was feeling a lack of motivation. He had some passive suicidal ideas as in life was not worth living. He had not gotten into Memorial Behavioral Health. Dr. Varney thought that was due to a scheduling issue (PX8, p. 26).

Petitioner returned in September of 2020. At that time, independent of any medical recommendations, he indicated he had decided to resign from the police force. He indicated he was at a point where he just wanted to end his life. After quitting his job, he was more future and goal-oriented and felt that life was worth living. They had increased the Fluoxetine again and he thought his mood was better with the increase. The doctor thought a change in occupation was in his best interest at that point for his mental health (PX8, p.28). As of September of 2020, Dr. Varney and Dr. Einspahr still believed that Petitioner's mood disorder had been aggravated with the carbon monoxide poisoning. Petitioner returned again in February of 2021. He felt he was still not better and was still having passive suicidal ideations (PX8, p. 29). He was taking lots of naps during the day. Sometimes his personal hygiene and care would be neglected. He was now working as a nutritionist. He was reporting more fatigue (PX8, p. 30). At that point, he was referred to Dr. Pandey in psychiatry. The doctor felt Petitioner had a chronic mood disorder of depression prior to the CO exposure on in November of 2019. Dr. Varney indicated that at the time of his visit to the ER in November of 2019, they were able to chase down his carboxyhemoglobin level in a couple hours with oxygen. Therefore, the acute effect of the carbon monoxide as measured by the blood test is thought to be dissipated (PX8, p. 39). Dr. Varney indicated as of 4/26/22, he had not seen Petitioner since 2/17/21. The doctor indicated that he was aware that Petitioner was just seen by a psychiatrist after the referral in February of 2021 (PX8, p. 42). Dr. Varney noted that Petitioner was seeing a med/psych doctor because he is double-boarded in medicine and psychiatry (PX8, p. 42-43).

The date after the deposition of Dr. Varney, both Dr. Einspahr and Dr. Varney wrote letters regarding Petitioner. Dr. Einspahr's letter dated 4/27/22 indicates that Petitioner has been experiencing worsening depressive symptoms which can be directly attributed to the carbon monoxide exposure. Dr. Varney's letter notes the exposure dates of 11/1919, 12/05/19 and 1/24/20. Dr. Varney indicates that the 6 ED visits including 3 for carbon monoxide exposure are directly related to Petitioner's occupation (PX19).

Dr. Stephen Best is a neuropsychiatrist at the Neuroscience Institute in Deerfield, IL (PX7, p. 5-6). The focus of his practice is treatment - refractory neuropsychiatric illness (PX7, p. 7-8). Dr. Best testified that Petitioner was first seen on 5/31/22. The first meeting was mostly history (PX7, p. 10). Dr. Best testified that he was looking for explanations as to why Petitioner did not recover. Petitioner had a history of depression (PX7, p. 14). Everything worsened when he had the carbon monoxide exposure and he became less and less functional (PX7, p. 14-15). Petitioner came to the doctor for an affective disorder which involved symptoms of an emotional variety. He found that a contributory factor was the carbon monoxide exposure (PX7, p. 18). Dr. Best indicated that from the history he received, something acute happened in terms of the carbon monoxide exposure, and then Petitioner became ill. He thought there was a connection. He noted that the brain becomes dormant with an injury (PX7, p. 20). The treatment plan was hyperbaric oxygen, TMS/ketamine, and some

medications. The hyperbaric oxygen reduces inflammation. The TMS/ketamine reawakens dormant circuits (PX7, p. 21). In terms of medication, the doctor recommended Lamictel (PX7, p. 23). Dr. Best felt that the treatment provided was a result of Petitioner's exposure to carbon monoxide.

Dr. Best, in his report of 9/20/24, indicated that as a direct result of carbon monoxide exposures, Petitioner experienced treatment-refractory depression, anxiety and behavioral instability. He felt that Petitioner had developed PTSD. He noted hyperbaric oxygen treatments and TMS/k. The doctor noted that Petitioner had shown great improvement and relief and was now able to explore vocational options. He felt that Petitioner would need occasional treatments for maintenance of his currently compensated state. He thought that Petitioner should avoid all occupations that are related to policing, corrections or being in life/death situations (PX17).

Dr. Terry Killian evaluated Petitioner on 10/19/22 at the request of The Respondent. *The Arbitrator finds it noteworthy that Dr. Killian was first contacted by Petitioner for an evaluation and he responded, "I told Ms Noll that although I could do this exam, there were a couple of other psychiatrists in town that might be better suited for this, because the border between neurology and psychology is a relative weakness in my psychiatric skills and knowledge."* Dr. Killian indicated that there was no doubt Petitioner was exposed to high levels of CO and that he has suffered significant mood, behavioral, and cognitive problems since. Petitioner described to Dr. Killian crying spells, severe depression, and intense anger, and significant memory loss. The doctor did not think Petitioner had reached maximum medical improvement. With regard to whether Petitioner could pursue employment in the future in law enforcement, Dr. Killian indicated that the question was probably moot because Petitioner did not see himself returning to law enforcement. It did not appear likely to Dr. Killian that Petitioner would be able to return to law enforcement safely and effectively unless he had a substantial improvement in his current symptoms. Dr. Killian doubted that such improvement was likely given the severity and duration of symptoms (PX6).

Nicole Werner is a neuropsychologist (RX4, p.4). *The Arbitrator found her opinions to be the most reasonable and credible because she was the only expert that addressed the CO blood levels and their impact. Moreover, her opinions were based on objective tests that showed Petitioner did not have neurocognitive disorders. (See Independent Neuropsychological Report, RX 4, Dep. Ex 2, pp 5-6).*

She was in the Department of Neurology at Washington University School of Medicine from 2005 to 2022 (RX4, p. 9-10). She was an instructor, an assistant professor and an associate professor of neurology. She presently is on the panel for the NFL Player Disability and Neurocognitive Benefit Plan, which is also the Bert Bell/Pete Rozelle Retirement Plan and the 88 Plan, all through the NFL. She interviewed Petitioner on 9/29/23. She reviewed medical records and did testing on Petitioner. She then prepared a report (RX4, p. 10). At the time Petitioner was seen, his cognitive test results did not demonstrate objective evidence of an acquired neurocognitive disorder. There was no evidence of such disorder or deficit noted during the entire evaluation of Petitioner. There was no objective evidence of an acquired neurocognitive disorder (RX4, p. 11). Her evaluation did not reveal objective evidence of an acquired neurocognitive disorder that would be attributable to carbon monoxide exposure at work. Petitioner told her of three different exposures. At the time he was seen, he was attending school full-time (RX4, p. 12). He was attending school to complete an undergraduate degree in physical therapy. Petitioner said he had all A's. Based upon the grades reported, Werner indicated it sounded like Petitioner was doing quite well from a cognitive standpoint. She indicated that neuropsychological tests are the most predictive of work functioning and they were not impaired objectively (RX4, p. 13). Therefore, she did not see any objective documentation or objective reason for him to have work restrictions (RX4, p. 13-14).

It was Werner's understanding that following the exposures, Petitioner continued working on the police force until 2020. He then was a nutrition coach from 2020 until 2023. She was not able to quantify any need for work

restrictions related to the carbon monoxide exposures based upon the neuropsychological test results (RX4, p. 14). Werner indicated it is possible that Petitioner had some acute transient symptomatology following the carbon monoxide exposures. The report on 11/19/2019 indicating he had headache, nausea and dizziness would not lead to even a transient objective neuropsychological impairment or a cognitive disorder acutely. In the medical records, she did not see any objective evidence to indicate a cognitive disorder was present acutely immediately after the exposures (RX4, p. 17). Based upon the carboxyhemoglobin levels, she would not expect cognitive sequela from those. Werner indicated that she mentioned cognitive and psychological diagnoses. She mentioned an adjustment disorder (RX4, p. 18). The records reflect that Petitioner was treated for depression at least as far back as 2012. He had multiple medications for depression (RX4, 19). Werner noted the other stressors in Petitioner's life including family, financial and job related (RX4, p. 16). Werner felt it was reasonable to conclude that Petitioner likely experienced an adjustment disorder with mixed anxiety and depression after the carbon monoxide exposure (RX4, p. 19-20). Werner felt that the CO exposure was a stressor and resulted in an adjustment disorder. In the absence of a carbon monoxide exposure, she would expect Petitioner to continue to have bouts of depression. A history of depression is a risk factor for future depression (RX4, p. 20). It is reasonable to conclude that Petitioner had an exacerbation of his symptoms, his psychological symptoms, following this CO exposure, which is the adjustment disorder with mixed anxiety and depression diagnosis (RX4, p. 20-21). Werner felt that this would be time-limited. Werner felt that the exacerbation likely persisted to September of 2020. Thereafter, there was no treatment until February of 2021 for depression-related symptoms (RX4, p. 21). Werner's current practice does not specialize in carbon monoxide exposure, but she has been many patients over the years with carbon monoxide exposure.

Werner indicated that with regard to the 11/19/19 incident, the information she had noted an initial CO level measure at 8, which went down to 3.6 after hi-flow oxygen. He was released to return to work the next day (RX4, p. 31). Werner indicated with regard to the December acute care notes that the blood level was listed at 3.3 (RX4, p. 34). There is a showing of a first CO meter read of 6 at the hospital which would still be within normal limits (RX4, p. 34-35). A level of 6 is considered to be carbon monoxide exposure (RX4, p. 35). She indicated it is unlikely neurobehavioral symptoms would acute occur in the context of the levels that were reported in Petitioner's case (RX4, p. 47). She thought it was likely that he had an adjustment disorder following the exposure to carbon monoxide (RX4, p. 48).

Werner testified that Petitioner's processing speed was within normal limits. His scores on memory tests were within expectations (RX4, p. 81). She testified that high levels of carbon monoxide in the blood can cause memory disturbance but that was not what was seen in Petitioner's case (RX4, p. 83). She did not see signs of acute blood levels that would suggest an increase in depression (RX4, p. 85). Her understanding from the records that he was not told to stop working and he was not hospitalized (RX4, p. 87). When Petitioner was seen at Memorial Medical Center in November of 2019, the head CT scan revealed no acute abnormalities (RX4, p. 97). At the hospital, they were not worried about significant cognitive or neurologic symptoms as far as the records reflect. They were not concerned about Petitioner acutely (RX4, p. 100). From a neuropsychological standpoint, she did not document objective evidence that would preclude him from functioning in the work place for jobs for which he was appropriately qualified (RX4, Exh. 2).

David Patsavas is a certified vocational rehabilitation consultant (PX9, p. 5). His business involves vocational counseling and a majority is related to workers' compensation in the state of Illinois (PX9, p. 6). He was contacted first by Petitioner's attorney to consider Petitioner as a vocational rehabilitation candidate. He was contacted to provide an initial vocational rehabilitation assessment for Petitioner (PX9, p. 12). In addition to meeting with Petitioner, Patsavas was provided medical (PX9, p. 16). Patsavas indicated that when a person is at maximum medical improvement, he will do what is called a transfer of skills analysis. He has not done that yet because Petitioner is not at MMI. He testified that it was clear to him that Petitioner would be a candidate for vocational rehabilitation services under National Tea guidelines. He noted there was projected loss of

income (PX9, p. 25). At the point Patsavas first saw Petitioner, Petitioner was not receiving treatment as recommended. In order to move forward vocationally, it was best that he receive the treatment needed. Job placement at that time would have been non-existent (PX9, p. 35). At that point, it did not appear that Petitioner could stay within the field of police work (PX9, p. 35-36).

Patsavas met with Petitioner in June of 2024. At that time, Petitioner was attending UIS and looking at a possible degree as a physical therapist. Petitioner indicated it was something he would be able to do and he was interested in doing (PX9, p. 48). More recently, Petitioner provided information as to what his program was for the fall of 2024 semester. At that point, he had changed his focus as far as what programs he was getting into (PX9, p. 50-51). After looking at physical therapy, due to a number of reasons, he decided to work towards a bachelor of arts without any specific major, just general (PX9, p. 51). Patsavas testified that he one time met with one of Petitioner's advisors at UIS when he was just starting classes. He indicated he wanted to make sure that Petitioner registered with the resource department for accommodations, such as more time for tests and quizzes (PX9, p. 51). That helps him in terms of processing (PX9, p. 52). The testing that Patsavas did involved a world of work inventory (PX9, p. 53). Petitioner's overall scores indicate that he is capable of doing well academically (PX9, p. 55). Patsavas testified that he is not finished with the process because Petitioner is not fully released. He has not done a labor market survey (PX9, p. 67). Without a labor market survey, he indicated he would be unable to suggest an earning capacity (PX9, p. 68). Patsavas testified that he still thinks Petitioner is a candidate for vocational rehabilitative services (PX9, p. 69).

As of October of 2024, Petitioner had not returned to full time employment. Patsavas had not had any conversations with Petitioner about his plans for employment or what his abilities were with securing employment (PX9, p. 75). Patsavas indicated that once Petitioner finished his bachelor's degree, he would start the process and identify if there are additional courses that would increase Petitioner's potential wages. The fact that Dr. Best says he is not at MMI is not going to stand in the way of providing those services (Tr. 80). Patsavas noted that Petitioner was putting full time into his education so that he was hoping he would do the same in the appropriate job setting (Tr. 81).

In 2022, with regard to his evaluation of Petitioner, this was not done to establish a vocational plan because he was still in need of treatment (Tr. 84). Patsavas indicated that when Petitioner was done with his intensive treatment with Dr. Best, he enrolled in classes at UIS (Tr. 86). Patsavas did not have any input in that decision, it was Petitioner's decision (Tr. 87). As of now, Petitioner is going to get a bachelor of arts degree in December (Tr. 88-89). At this time, Patsavas has not sat down with Petitioner regarding a plan or goal in terms of employment after graduation. Petitioner has not indicated anything to Patsavas. Patsavas confirmed that with Petitioner still in school, he has not performed the transferrable skills analysis (Tr. 89). With things on hold, Patsavas has not looked at the local job market in terms of jobs for Petitioner (Tr. 91). Patsavas agreed that the Supreme Court of Illinois in National Tea indicated whether a rehab program should be designed to restore Petitioner to his pre-injury earning capacity depends on the circumstances and is not to be inflexibly applied. Other factors are to be looked at including the cost benefit analysis. Another factor is the likelihood of employment with the completion of the vocational services. Also, to be factored in is whether Petitioner has sufficient skills to obtain employment without further education or training (Tr. 93). Patsavas agreed that while Petitioner was under the intensive treatment with Dr. Best, there was no need for any vocational services (Tr. 96-97).

Elizabeth Skyles is Skyles Vocational Consulting (RX2, p. 4). She has been doing that since 2004 (RX2, p. 4-5). From 2004 through 2023, she was located in Forsyth, Illinois, in Macon County. She then moved to Frankfort, Illinois. She is a vocational rehabilitation counselor, certified rehabilitation counselor, licensed professional counselor, and a licensed clinical professional counselor (RX2, p. 5). The Respondent requested that she perform a vocational evaluation on Petitioner to make a determination regarding employability and

earning capacity. In addition to meeting and talking with Petitioner, she reviewed medical records. Her report contains everything that she looked at and did in terms of Petitioner (RX2, p. 8). She performed a transferrable skills analysis (RX2, p. 9). She also performed a labor market survey. The transferrable skills analysis gives an indication as to what a person could do based on what that person has done (RX2, p. 10). The transferrable skills analysis on Petitioner indicate that he is qualified to perform a range of alternative positions involving health care, medical transporting, protecting, investigating, information giving, teaching, merchandising, sales, administrating, and accommodating (RX2, p. 11-12). The labor market survey involves the specific labor market within a 50 mile radius of Petitioner. That determines what is available in the area that fits with Petitioner's vocational profile (RX2, p. 12). The jobs listed in her report have requirements to apply for the jobs that do not have include having a Bachelor of Arts degree (RX2, p. 13-14). As of the interview on 8/30/24, Petitioner was in school. He had recently changed the focus of his education. He had changed his major to liberal studies (RX2, p. 14). He had a new goal of graduating in December of 2024 with a Bachelors of Arts degree (RX2, p. 14-15). The courses he was taking at the time were all online. He has many computer skills (RX2, p. 15). Petitioner did not indicate he was in a diligent job search. His primary focus was on education. That had the been the case beginning in the fall of 2023 (RX2, p. 16).

Skyles felt within reasonable degree of vocational certainty that Petitioner is currently employable. She thought that there were currently positions available in his labor market that fit his vocational profile. Based upon her knowledge of the central Illinois labor market, he would have been employable and there would have been positions available in the fall of 2023 (RX2, p. 17). Skyles testified that she did not indicate in the course of the meeting with Petitioner, and in the presence of David Patsavas, that Petitioner was a candidate for vocational services. She indicated that there may have been a misunderstanding. Skyles said that they talked about types of vocational services, but as of that time she had not yet completed her vocational evaluation and had not rendered an opinion regarding vocational services. She indicated it would have been premature for her to say anything like that at the time of the evaluation (RX2, p. 19). The transferrable skills analysis and the labor market survey were done after her meeting with Petitioner (RX2, p. 9-10). Skyles indicated that she took the information from the transferrable skills analysis plus his specific education, knowledge, skills, ability, and work history and put that together to look for actual job titles in the labor market (RX2, p. 52). Skyles indicated that her labor market survey analysis was ongoing in nature as she prepared her report. She did not check as of the date of the report (10/24/24) to determine if all 10 jobs listed in that report were still available (RX4, p. 80).

The Arbitrator finds there were three injury reports/exposures: October 19, 2019, December 5, 2019 and January 24, 2020 (RX 3,4, 5). The first two involved at treatment at the Memorial Health System where carboxyhemoglobin blood lab results revealed levels from 3.3 to 3.8. and the CO2 bedside monitor readings ranged up to 10. There was no treatment for the January 24, 2020 incident at Memorial Health System.

CONCLUSIONS OF LAW

With regard to (O) Vocational Rehabilitation, (K) Maintenance, and (N) Credit, the Arbitrator finds as follows:

Petitioner hired David Patsavas, a vocational rehabilitation counselor, in the fall of 2022, with a pending trial date of 11/02/22. At that point, Petitioner had filed a 19(b) petition and was seeking medical benefits and TTD benefits based upon treatment recommended by Dr. Best. Since Petitioner had not had the treatment recommended, it was unknown at that point when treatment might conclude and what Petitioner's condition might be after the treatment. It was unknown what, if any, restrictions Petitioner may have after the treatment. Therefore, a vocational rehabilitation evaluation was premature at that time. With that evaluation in September and October of 2022, and with David Patsavas' appearance in Quincy on 11/02/22 for a trial that did not proceed, the Arbitrator concludes that the evaluation was done for purposes of litigation, providing evidence at the 19(b) hearing.

After Petitioner received the intense treatment with Dr. Best, he enrolled as a student at UIS, pursuing a degree in physical therapy. David Patsavas testified he had no input with regard to this decision. Petitioner did not consult with his vocational counselor about what was in his best interest at that time. Subsequently, for a number of reasons, Petitioner decided not to continue to pursue his education in physical therapy. He changed to a liberal studies degree. David Patsavas testified there is no plan as to what Petitioner will do once he concludes his bachelor's degree.

On behalf of Respondent, Elizabeth Skyles evaluated Petitioner on 8/30/24 and subsequently performed a transferrable skills analysis and a labor market survey. She concluded that Petitioner was presently employable and that jobs exist in the labor market for Petitioner. The same situation would have been present in the fall of 2023, when Petitioner began school.

The Arbitrator notes that David Patsavas has not performed a labor market survey or a transferrable skills analysis, which Elizabeth Skyles has. Elizabeth Skyles concluded there are jobs for which Petitioner qualifies presently without a bachelor's degree. David Patsavas has no input in Petitioner's decision to attend school or switch his focus after a year of school. There is no plan once Petitioner has a bachelor's degree.

Petitioner cites National Tea, Co. v. Industrial Commission, (97Ill. 2d 424 (1983)) in the Petition for Vocational Services and David Patsavas mentions the case in his testimony. One of the factors to be considered in terms of the appropriateness of vocational rehabilitation is the likelihood that the vocational rehabilitation will increase the earning capacity. There is no such evidence here. Another factor is the likelihood of obtaining employment upon completion of the program. There is no evidence that Petitioner's education pursuit has increased the likelihood of obtaining employment. A further factor is whether Petitioner has the skills to obtain employment without further training or education. Elizabeth Skyles says he can obtain gainful employment now.

Based on this evidence, the Arbitrator finds that Petitioner has not proven by a preponderance of the evidence that his educational endeavors beginning in late August of 2023 were necessary and appropriate with regard to his finding gainful employment. Therefore, Respondent is not responsible for any costs relating to that education and is not responsible for paying maintenance benefits to Petitioner from 8/27/23 through 12/31/23, the period of time sought by Petitioner. Further, Petitioner would not be entitled to maintenance beginning on 1/01/24 and lasting through the conclusion of his education in December of 2024. Petitioner has not shown that he is entitled to vocational rehabilitation services after the expected conclusion of his education at this time. Further, Respondent is not responsible for the vocational consultant bill from David Patsavas.

Based on these findings, the Arbitrator finds that the Respondent is entitled to a credit in the amount of \$4,955.16 (6 weeks) for the maintenance period from 8/27/23 to 10/07/23, since Petitioner was not in an appropriate rehabilitation endeavor.

With regard to (K) temporary total disability and temporary partial disability, the Arbitrator finds as follows:

At the time of Petitioner's resignation from the Springfield Police Department on 9/08/20, Petitioner testified that he did not feel he could mentally handle his job. He also had safety concerns. Petitioner's Exhibit 26 is a letter to whom it may concern from Zachary Boyle. There is no date on that letter. Respondent's Exhibit 3 is a Springfield Police Department Inter-Departmental Memorandum addressed to Police Chief Winslow from Zach Boyle dated 9/08/20. The memo is initialed very similarly to the initials on Petitioner's Exhibit 26. Petitioner testified that Respondent's Exhibit 3 is not his. He indicated that somebody else wrote it and forged his signature. Josh Stuenkel is currently Deputy Chief of Administrative Services for the Springfield Police Department. He has been with the department for a little over 24 years. In his present position, he has access to personnel files, which he did not in his previous Deputy Chief position. He testified that he had looked at

Petitioner's personnel file and that Respondent's Exhibit 3 was in that file. He further testified that Petitioner's Exhibit 26 was not in the police department personnel file.

The Arbitrator notes that neither Dr. Varney or Dr. Einspahr told Petitioner that he should resign from the Springfield Police Department. After the fact, they may have thought it was a good idea. Petitioner apparently resigned from the Springfield Police Department without having another job lined up. Although it is unclear when, Petitioner did obtain employment in December of 2020 or at the beginning of January, 2021. Since Petitioner was not advised by his doctors to leave the Springfield Police Department, the Arbitrator finds he is not entitled to TTD benefits until he located alternative employment.

With regard to Petitioner's employment as of the beginning of 2021, the evidence suggests that the jobs Petitioner had were part-time. There is no evidence to suggest that he sought any full-time employment.

Based on the evidence, the Arbitrator finds that Petitioner is not entitled to any type of temporary partial disability benefits prior to his treatment with Dr. Best in late July of 2022 or in between in treatments with Dr. Best, from 8/11/22 to 1/14/23. The Arbitrator notes that Respondent paid TTD benefits over this period of time from 7/31/22 to 8/10/22 and from 1/15/23 through 10/07/23.

With regard to (F) causal connection and (J) medical, the Arbitrator finds as follows:

Nicole Werner, a neuropsychologist, saw Petitioner on 9/29/23. As mentioned above, the Arbitrator found her to be credible. Based upon the tests performed and her evaluation of Petitioner, Werner testified that there was no objective reason for Petitioner to have any work restrictions. She indicated that her evaluation did not reveal any objective evidence of an acquired neurocognitive disorder that would be attributable to carbon monoxide exposure at work. She also testified that she felt he had continued exposure into March of 2020. There are three claims filed for the dates noted above. The Arbitrator notes that Petitioner had treatment for depression prior to the initial carbon monoxide exposure on 11/19/19. The medical records regarding that treatment date back to 2012. In the initial office note, it is noted that Petitioner has had depression symptoms since high school. Petitioner underwent treatment for his depression symptoms including intensive treatment with Dr. Best beginning in January of 2023 and going on for the next 14 weeks. At that point, Petitioner's treatment with Dr. Best tapered down to the point where he enrolled in classes at UIS in the fall of 2023, starting in late August of 2023. Dr. Best has indicated as of September of 2024 that Petitioner has not yet reached MMI and will need to continue to need psychiatric treatments.

Nicole Werner felt that Petitioner would be able to work at jobs for which he meets appropriate qualifications. Werner felt that Petitioner had additional stressors with regard to employment and family life. Werner refers to remote carbon monoxide exposures in her report. She was seeing Petitioner almost four years after the initial exposure on 11/19/19. She noted that in the absence of carbon monoxide exposure, she would expect Petitioner to have bouts of depression. The pre-existing history of depression raises Petitioner's risk for developing bouts of depression in the future regardless of any exposure to carbon monoxide. Werner thought it was reasonable to conclude that Petitioner had an exacerbation of his psychological symptoms following his CO exposure (RX4, p. 20). She indicated that that would be time-limited (RX4, p. 21). Werner clearly felt any ongoing treatment Petitioner was having was not related to his CO exposures.

Based upon the evidence, Petitioner did sustain an exacerbation of his depression as a result of the carbon monoxide exposures he had. As previously noted, his initial exposure on 11/19/19 resulted in him seeing Dr. Einspahr and Dr. Varney on 12/04/19 before his second exposure. He was already complaining of increasing problems. Petitioner's condition and treatment for that condition in 2019, 2020, 2021, and 2022 would be related to the carbon monoxide exposures. The Petitioner's treatment with Dr. Best in 2023 would also be

related up until the evaluation by Nicole Werner on 9/29/23. At that point, Petitioner had finished his intensive treatment with Dr. Best and was attending college. Based upon this evidence, the Arbitrator finds that after 9/29/23, Petitioner's depression condition is no longer related back to the carbon monoxide exposures, but is related to his pre-existing depression and other stressors as noted in the medical. With this in mind, Respondent is responsible for all related medical bills incurred through 9/29/23, but is not responsible for medical incurred thereafter.

With regard to (M), Penalties and Attorney Fees, the Arbitrator finds as follows:

The Arbitrator notes that this case involves three exposures to carbon monoxide while Petitioner was working for Respondent. He initially sought care with his family physician at SIU, Dr. Varney. Dr. Varney indicated that he had not been well-versed about a carbon monoxide exposure contributing to a mood disorder. Petitioner's medical care after the initial carbon monoxide exposure took place on 12/04/19, 1/29/20, 3/11/20, 9/16/20, and 2/07/21. On those dates, he saw Dr. Varney and a resident. He was referred to see a psychiatrist at SIU and did not do so until 1/28/22. He was referred by Dr. Pandey to Dr. Best in May of 2022. Dr. Best put forth a Letter of Medical Necessity dated 7/26/22 regarding Petitioner's condition. Treatment began shortly thereafter on 7/31/22 and concluded on 8/10/22, when Dr. Best refused to treat Petitioner because the doctor was not getting paid. Respondent then set up an independent medical evaluation with Dr. Killian, which was performed on 10/19/22. When Dr. Killian's report was sent to the attorneys the following week, Respondent immediately indicated that there was no need for proceeding to hearing because Respondent would pay the TTD and medical associated with Dr. Best's opinion. Respondent sent two emails to the arbitrator assigned to the case at that time and opposing counsel indicating that there was no need to go to trial on 11/02/22. The matter was not continued and all parties appeared at the scheduled trial date on 11/02/22 in Quincy, Illinois. The case did not proceed at that time based upon Respondent indicating that it would take care of the medical and TTD.

The Arbitrator would note that an exposure to carbon monoxide exacerbating pre-existing depression is an unusual workers' compensation claim. In fact, Petitioner's treating family doctor, Dr. Varney, indicated he was not aware of any connection. In view of the significant gaps in Petitioner's medical care related to his depression following the exposures, and the fact that Dr. Best did not become involved here until late May of 2022 and issued a Letter of Medical Necessity in late July of 2022, the Arbitrator finds it understandable that the Respondent did not schedule an independent medical evaluation until after these events in 2022. As noted above, Respondent did immediately indicate that it would be responsible for the treatment after receiving the IME report. Subsequently, Respondent has taken care of Petitioner's travel expenses and living costs while involved in the intensive treatment with Dr. Best. With regard to the medical expenses from Dr. Best, he would not agree to accept payment pursuant to the fee schedule, so Petitioner and his family have paid those bills in full. Respondent has been reimbursing Petitioner pursuant to the fee schedule. Based upon this evidence, the Arbitrator finds that Petitioner is not entitled to penalties and attorney fees in this case.

Further, Petitioner is not entitled to payment of his attorney's costs with respect to preparing for trial.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC006148
Case Name	Zachary Boyle v. Springfield Police Department
Consolidated Cases	20WC006147 20WC006149
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0474
Number of Pages of Decision	7
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Sarah Noll
Respondent Attorney	L. Robert Mueller

DATE FILED: 11/24/2025

/s/ Christopher Harris, Commissioner

Signature

20 WC 6148

Page 1

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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZACHARY BOYLE,

Petitioner,

vs.

NO: 20 WC 6148

SPRINGFIELD POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

On November 7, 2024, this claim, 20 WC 6148, consolidated with 20 WC 6147 and 20 WC 6149, proceeded to arbitration pursuant to Section 19(b) of the Act. The disputed issues at arbitration were identical in all three claims and comprised of causation, medical expenses, temporary benefits, penalties and attorney fees, credit and vocational rehabilitation. The Arbitrator issued separate decisions for each claim number. The Arbitrator found that Petitioner's undisputed injuries in 20 WC 6148 and 20 WC 6149 involved subsequent carbon monoxide exposures after Petitioner's initial exposure on November 19, 2019, the subject of 20 WC 6147. "Petitioner had already sought medical attention before the two subsequent exposures. With that in mind, the Arbitrator is writing his decision in these consolidated carbon monoxide cases under 20WC006147." Petitioner timely filed a Petition for Review in these three claims.

The Commission, with due notice given to the parties and after full consideration of the issues on Review, specifically, medical, temporary and vocational rehabilitation benefits, as well as penalties and attorney fees, and being advised of the facts and applicable law, affirms and adopts the decision of the Arbitrator in 20 WC 6148. A copy of the Arbitrator's decision is attached hereto and made a part hereof. The Commission also remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2025 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.

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

November 24, 2025

CAH/pm
O: 11/6/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC006148
Case Name	Zachary Boyle v. Springfield Police Department
Consolidated Cases	20WC006147; 20WC006149; 21WC003303; 21WC003304;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	3
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Sarah Noll
Respondent Attorney	L. Robert Mueller

DATE FILED: 2/7/2025

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 4, 2025 4.16%

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
 19B ARBITRATION DECISION**

Zachary Boyle

Employee/Petitioner

v.

Springfield Police Department

Employer/Respondent

Case # **20** WC **006148**

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 **11/07/24**. 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 **Vocational Rehab**

FINDINGS

On **12/05/19**, 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.

In the year preceding the injury, Petitioner earned **\$64,707.24**; the average weekly wage was **\$1,244.37**.

On the date of accident, Petitioner was **28** years of age, *married* with **1** dependent child.

Respondent shall be given a credit of **\$32,791.96** for TTD, **\$0** for TPD, **\$0** for maintenance and **\$0** for other benefits, for a total credit of **\$32,791.96**.

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

ORDER

See 20WC006147

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

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

Edward Lee
Signature of Arbitrator

February 7, 2025

The Arbitrator notes that 20WC006148 and 20WC006149 are subsequent carbon monoxide exposures after Petitioner's exposure on 11/19/19 (20WC006147). Petitioner had already sought medical attention before the two subsequent exposures. With that in mind, the Arbitrator is writing his decision in these consolidated carbon monoxide cases under 20WC006147.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC006149
Case Name	Zachary Boyle v. Springfield Police Department
Consolidated Cases	20WC006147 20WC006148
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0475
Number of Pages of Decision	7
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Sarah Noll
Respondent Attorney	L. Robert Mueller

DATE FILED: 11/17/2025

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ZACHARY BOYLE,

Petitioner,

vs.

NO: 20 WC 6149

SPRINGFIELD POLICE DEPARTMENT,

Respondent.

DECISION AND OPINION ON REVIEW

On November 7, 2024, this claim, 20 WC 6149, consolidated with 20 WC 6147 and 20 WC 6148, proceeded to arbitration pursuant to Section 19(b) of the Act. The disputed issues at arbitration were identical in all three claims and comprised of causation, medical expenses, temporary benefits, penalties and attorney fees, credit and vocational rehabilitation. The Arbitrator issued separate decisions for each claim number. The Arbitrator found that Petitioner's undisputed injuries in 20 WC 6148 and 20 WC 6149 involved subsequent carbon monoxide exposures after Petitioner's initial exposure on November 19, 2019, the subject of 20 WC 6147. "Petitioner had already sought medical attention before the two subsequent exposures. With that in mind, the Arbitrator is writing his decision in these consolidated carbon monoxide cases under 20WC006147." Petitioner timely filed a Petition for Review in these three claims.

The Commission, with due notice given to the parties and after full consideration of the issues on Review, specifically, medical, temporary and vocational rehabilitation benefits, as well as penalties and attorney fees, and being advised of the facts and applicable law, affirms and adopts the decision of the Arbitrator in 20 WC 6149. A copy of the Arbitrator's decision is attached hereto and made a part hereof. The Commission also remands this case to the Arbitrator for further proceedings and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill. 2d 327 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2025 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.

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

November 24, 2025

CAH/pm
O: 11/6/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC006149
Case Name	Zachary Boyle v. Springfield Police Department
Consolidated Cases	20WC006147; 20WC006148; 21WC003303; 21WC003304;
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	4
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Sarah Noll
Respondent Attorney	L. Robert Mueller

DATE FILED: 2/7/2025

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 4, 2025 4.16%

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
19B ARBITRATION DECISION**

Zachary Boyle

Employee/Petitioner

v.

Springfield Police Department

Employer/Respondent

Case # **20** WC **006149**

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 **11/07/24**. 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 **Vocational Rehab**

FINDINGS

On **1/24/20**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

In the year preceding the injury, Petitioner earned **\$65,847.60**; the average weekly wage was **\$1,266.30**.

On the date of accident, Petitioner was **28** years of age, *married* with **1** dependent child.

Respondent shall be given a credit of **\$32,791.96** for TTD, **\$0** for TPD, **\$0** for maintenance and **\$0** for other benefits, for a total credit of **\$32,791.96**.

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

ORDER

See 20WC006147.

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

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

Edward Lee
Signature of Arbitrator

February 7, 2025

The Arbitrator notes that 20WC006148 and 20WC006149 are subsequent carbon monoxide exposures after Petitioner's exposure on 11/19/19 (20WC006147). Petitioner had already sought medical attention before the two subsequent exposures. With that in mind, the Arbitrator is writing his decision in these consolidated carbon monoxide cases under 20WC006147.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC031363
Case Name	Michael Donner v. WMS & Associates Prevention Inc. & IWBF
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0476
Number of Pages of Decision	27
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Leonard Becker
Respondent Attorney	Eric M. White, Drew Dierkes

DATE FILED: 11/24/2025

/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)
☐ Modify	☐ PTD/Fatal denied
	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL DONNER,

Petitioner,

vs.

NO: 22 WC 31363

WMS & ASSOCIATES PREVENTION, INC.,
 and the ILLINOIS STATE TREASURER as
 EX-OFFICIO CUSTODIAN of the
 INJURED WORKERS' BENEFIT FUND,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent WMS & Associates Prevention, Inc., and notice given to all parties, the Commission, after considering the issues of employment relationship, accident, notice, benefit rates, causal connection, medical expenses, prospective medical care and temporary total disability (TTD) 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 January 27, 2025 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 WMS & Associates Prevention, Inc. 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.

November 24, 2025

CAH/pm
O: 11/20/25
052

/s/ Christopher A. Harris
Christopher A. Harris

/s/ Maria E. Portela
Maria E. Portela

/s/ Marc Parker
Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC031363
Case Name	Michael Donner v. WMS & Associates Prevention Inc. & IWBF
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Nina Mariano, Arbitrator

Petitioner Attorney	Leonard Becker
Respondent Attorney	Eric M. White, Drew Dierkes

DATE FILED: 1/27/2025

/s/ Nina Mariano, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 22 2025 4.17%

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

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Michael Donner

Employee/Petitioner

v.

WMS & Associates Prevention, Inc

Employer/Respondent

Case # **22** WC **31363**

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 **Nina Mariano**, Arbitrator of the Commission, in the city of **Chicago**, on **October 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 **November 12, 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 **\$14,972.00**; the average weekly wage was **\$936.99**.

On the date of accident, Petitioner was **47** 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

RESPONDENT SHALL PAY REASONABLE AND NECESSARY MEDICAL SERVICES OF \$194,627.95, AS PROVIDED IN SECTIONS 8(A) AND 8.2 OF THE ACT.

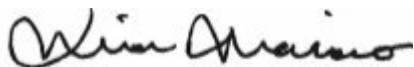
RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF \$624.66 PER WEEK FOR 13 AND 4/7 WEEKS, COMMENCING NOVEMBER 12, 2022 THROUGH FEBRUARY 14, 2023, AS PROVIDED IN SECTION 8(B) OF THE ACT.

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF \$562.19/WEEK FOR 200 WEEKS, BECAUSE THE INJURIES SUSTAINED CAUSED THE 40% LOSS OF THE PERSON AS A WHOLE, AS PROVIDED IN SECTION 8(D)2 OF THE ACT.

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.



Signature of Arbitrator

January 27, 2025

At the time of the arbitration hearing, Michael Donner, Petitioner, was 49 years of age. (TX 10). On November 12, 2022, the day of the work-related accident, Petitioner was 47 years of age, single, with no dependent children. (TX 10). On November 12, 2022, Petitioner had two employers. Petitioner worked for Grifols Biomat Plasma in Maywood, Illinois, as a donor technician, working 40 hours per week and earning \$17.75 per hour. (TX 12-15). Petitioner's second job was with Respondent, WMS & Associates Prevention, Inc., an Indiana corporation.

Michael Williams (hereinafter "Williams"), president of Respondent, explained that Respondent is a company that provides "courtesy" escorts. (TX 99). A courtesy escort is where the escort arrives at a location, walks the client from the building to the car or from the car to the building. *Id.* Petitioner describes this work as "security" escorts. Williams testified that he used between 20 and 25 courtsey escorts at any given time, which he considered to be independent contractors and not employees.

Petitioner began his employment with Respondent in February 2022 (TX 16). Petitioner learned of the position through a friend, Juan Gonzalez, who referred him. Petitioner would escort currency exchange employees as they walked to and from their places of business, various currency exchanges, and their respective vehicles at the beginning or end of their shifts. (TX 18-19). The purpose of the security escort is to act as a deterrent and reduce safety threats that currency exchange employees may encounter as they arrive and leave work. (TX 131-132). Petitioner understood from Respondent that in 2022 currency exchanges and their employees were potential robbery targets. (TX 29-30). Petitioner performed between two and five security escorts during a shift. (TX 62). During 2022, Petitioner testified he performed approximately 948 security escorts. (TX 142).

On November 12, 2022, Petitioner was dispatched by Williams to a currency exchange located at 16th Street and Pulaski Avenue in Chicago, Illinois (TX 25, 99). Petitioner arrived at the currency exchange near closing time and signed the “sign-in” book indicating his arrival at the location. (TX 26). He waited inside the currency exchange for the currency exchange employee, a woman, to finish her work duties. (TX 26). Petitioner and the employee exited the rear of the currency exchange and Petitioner escorted the employee by walking with her to her car approximately 50 feet away. (TX 28). As the currency exchange employee entered her vehicle and while Petitioner was standing next to her vehicle, a previously unknown assailant approached Petitioner from the alley and fired a handgun striking Petitioner in his abdomen. (TX 29-30). The occurrence was captured on a video recording. (TX 31, PX H). Petitioner believed that the assailant’s intent was to rob the currency exchange by first eliminating Petitioner and then forcing the currency exchange employee back into the currency exchange. (TX 32).

Petitioner did not know the assailant and did not provoke the shooting with his actions or words. (TX 35). Petitioner testified that he did nothing to cause the occurrence other than being at that place at that time. (TX 36). Williams testified that Petitioner would not have been shot if he had not been assigned to the currency exchange that day. (TX 130).

After being shot, Petitioner was taken to Mt. Sinai Hospital. There he was diagnosed as suffering from a gunshot wound to the abdomen. (PX A pg 116-117). He underwent emergency surgery that required his abdomen to be opened with a vertical incision that ran from his sternum to his groin (midline laparotomy). *Id.* After exploration of the internal organs for gunshot damage, the surgeon removed Petitioner’s damaged left kidney (left nephrectomy), removed a portion of damaged colon (left segmental colectomy), and inserted a drainage tube (left tube thoracostomy) *Id.* He was also suffering from a small left pneumothorax and plural effusion. *Id.* Petitioner was

intubated during the procedure and remained intubated for a time while recovering in the ICU. *Id.* The midline laparotomy incision remained open after the surgery, and is shown in PX I.

On November 15, 2022, Petitioner underwent a second surgery to repair his diaphragm (two areas of injury required repair due to bullet damage) and to complete a descending colon mobilization and anastomosis to reconnect his digestive tract. (PX A pg 141- 145, 156).

On November 19, 2022, Petitioner was discharged from the hospital. (PX A pg 192, 218-219). He returned to the hospital on November 26, 2022 complaining of severe abdominal pain and vomiting. (PX A pg 765 - 769). He was treated in the ER that day. *Id.*

On November 29, 2022 or earlier, Petitioner reported to Williams that he had been shot while working for Respondent. (TX 48). On November 29, 2022, Williams advised Petitioner by text that he was going to start a worker's compensation claim for Petitioner. (TX 48). Williams made that statement to Petitioner despite knowing Respondent did not have workers' compensation insurance. (TX 137). No claim was ever opened by Respondent.

On January 3, 2023 Petitioner returned to the hospital complaining of severe abdominal and back pain and diarrhea. (PX A pg 841). It was determined that Petitioner had developed retroperitoneal abscess adjacent to the psoas (a low back muscle). (PX A pg 899, 904-905). Petitioner was readmitted to the hospital and he underwent a third surgical procedure which drained the abscess under CT guidance. *Id.*

Petitioner remained in the hospital until January 7, 2023. Images of Petitioner's incisions and scarring are shown in PX I (TX 40-41). Petitioner became emotional when testifying regarding the images and what he went through. From November 12, 2022 through January 8, 2023 there were \$194,627.95 in medical charges. (PX A pg 1005- 1028). Petitioner remained restricted from

all work duties through February 14, 2023. (PX C, B). Petitioner did not return to employment with Respondent and is currently employed as a counselor at a halfway house. (TX 58).

Since the accident, Petitioner has consistent abdominal pain and cramping. (TX 54). His abdomen remains sensitive. (TX 56). His back continues to hurt. *Id.* On “bad days” the pain will cause him to return to the hospital. *Id.* He has chronic diarrhea, noting that “as soon as I eat something, it runs straight through me...like water”. (TX 55). Petitioner takes a prescribed stool congealer to manage the diarrhea. *Id.* Nonetheless, the diarrhea symptoms continue and remain problematic. (TX 55-56).

Petitioner notices that he gets winded easily and that he can only sprint 25 feet and the ability to walk a distance is limited. (TX 55). He is unable to lift weight in excess of 40 lbs. (TX 58-59). Anything heavier puts too much stress on Petitioner’s back or pulls on his frontside. (TX 58). He avoids standing for long periods of time. (TX 58). Moreover, Petitioner testified that the experience has traumatized him and is a source of mental pain for him every day. (TX 57). He had tremors at night which interrupt his sleep. (TX 56).

Despite demanding benefits, Petitioner has received no workers’ compensation benefits from Respondent. (TX 49-50). At the time of the accident, Respondent did not have in force a policy of workers’ compensation insurance. (PX G, TX 135-136).

When Petitioner applied to work for Respondent, Petitioner completed an employment application and submitted it to Williams, the owner of Respondent. (TX 17). Petitioner filled out the form with “Independent Contractor Information” on the header for Respondent which was entered into evidence as Respondent’s Exhibit 1. It was not signed by the parties but appeared to be an information sheet with Petitioner’s basic contact information written in by Petitioner. Petitioner received an offer of employment over the phone from Williams; he never met him in

person. *Id.* Petitioner summarized his duties were “To escort tellers to their car. Wait, go in, sign a book, and then wait for the tellers to come out, and then escort them to their vehicles and watch them leave. And then I would get in my vehicle and go to my next location”. (TX 18). Petitioner further understood that his role was to provide security for the employee as the employee left the business and went to their vehicle. (TX 19).

Petitioner understood that Williams was his boss and supervisor. (TX 20, 60, 139-140). Upon being hired, Williams gave Petitioner a pamphlet instructing what actions Petitioner could undertake when he was on the job and what acts were not permissible. (TX 90). For example, Petitioner was prohibited from having anyone else accompany him to the currency exchange locations. (TX 90). This document was not submitted into evidence. Respondent did not provide Petitioner with a uniform, any training, or any work materials. After receiving a complaint from a client that Petitioner did not escort a client all the way to their vehicle, Williams explained to Petitioner what the client was paying for – an escort from car to door or door to car. Moreover, Williams told Petitioner how Petitioner was to complete the work that was assigned. (TX 91-92). Petitioner testified Williams’s instructions included,

“This is how, you know, you secure escort a person to their car. You wait for them. You wait for them to lock up. You stand behind them while they're locking the door. You watch your soundings. You look left and right and in front of you... You walk a person to their vehicle. You watch them get in their vehicle, pull off, and then you go to your next location.” (TX 90-91).

Petitioner would receive his schedule of assignments from Williams daily via text. (TX 20, 63). The texts would direct Petitioner to which currency exchange locations he was to provide security escort services and when to arrive at those locations to perform those services. (TX 20). Petitioner was required to complete the work timely according to Respondent’s daily schedule without deviation from the schedule. (TX 63). Petitioner was required to check in with Williams

before he headed out to complete his assignments. (TX 66). Petitioner was required to be on time according to the Respondent's schedule. *Id.* Petitioner was required to report back to Williams when the services were completed. (TX 21).

Petitioner was expected to work whenever Williams sent him a daily schedule of locations to visit. (TX 72). Petitioner understood that if he refused assignments he would be fired by Respondent. (TX 95). Williams had the authority to terminate Petitioner, but testified that he would not fire someone for refusing to work. (TX 60). Petitioner understood he could quit anytime and that he had no long term contract with Respondent. (TX 82). Petitioner initially received morning and evening assignments when he began working in February 2022, but in August 2022 he started a job with Grifols Plasma Center and stopped working for Respondent. Then in early October 2022, Petitioner resumed working for Respondent, but chose only evening assignments. He was not terminated for not working between August and October of 2022 or for only working in the evenings after October 2022.

When handling Respondent's daily schedule of assignments visiting various currency exchanges, the time Petitioner spent traveling to the currency exchange, checking in, signing the book, waiting for the currency exchanges to close down, and then escorting the employees to their vehicle was dedicated to the service of Respondent. (TX 65).

While working for Respondent, Petitioner did not provide similar security escort services to other companies or entities. (TX 61). Petitioner did not have his own security business. *Id.* Petitioner did not have a website or business cards that advertised or held Petitioner out as being someone who could be hired for security purposes. *Id.* Petitioner did not have a dedicated business phone number that would be used by persons seeking to hire Petitioner for security escorts. *Id.* Petitioner communicated with Respondent through Petitioner's personal phone. *Id.* Petitioner

undertook no other security type work in 2022 other than the work he did for Respondent. *Id.* Petitioner did not have to bid and offer pricing for Respondent's work or compete against other providers for Respondent's work. *Id.*

Petitioner understood that it was expected that Petitioner would personally complete the assigned work he had with Respondent. (TX 63). Petitioner did not and was not allowed to assign Respondent's work to others. (TX 63).

Earnings/TTD

Petitioner testified that he was paid every two weeks through Cash App. Petitioner testified he was paid \$14.50 for each location he went to. Williams testified escorts were paid \$8.00 for each location. Respondent's Exhibit 2 was a 1099-NEC form which showed Petitioner was paid \$7,588.00 in 2022 by Respondent. Taxes were not withheld from Petitioner's pay. Petitioner testified that at the time of the injury he made \$17.75-\$18.00/hour working for Grifols Plasma Center and he worked 40 hours per week.

Petitioner testified he was unable to work for approximately three months after the accident. Petitioner returned to work for Grifols Plasma Center on February 14, 2023. Petitioner did not provide off work notes to Respondent.

Petitioner testified he did receive short term disability through his second job at Grifols Plasma Center. Petitioner never received money for medical or time off work from Respondent.

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. 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), whether Respondent was operating Under and Subject to the Illinois Workers' Compensation Act on November 12, 2022, the Arbitrator finds as follows:

The Arbitrator finds that on November 12, 2022, the Respondent was operating under and subject to the Illinois Workers' Compensation Act. Pursuant to Section 3, the Act

automatically applies to a Respondent who meets any one of the seventeen listed “extra-hazardous” activities. Testimony at trial established that Respondent was engaged in business of providing security escort services to anyone in need of such services. This falls under Subsection 17(a) “Any business or enterprise in which goods, wares or merchandise are sold or in which services are rendered to the public at large...” No evidence was presented to the contrary. Accordingly, the Arbitrator finds that Respondent was operating under and subject to the Illinois Workers’ Compensation Act on November 12, 2022.

Regarding issue (B), whether an employee-employer relationship existed, the Arbitrator finds as follows:

The Arbitrator finds that the record as a whole supports a finding that an employer-employee relationship between Petitioner and Respondent existed on November 12, 2022. Determining employer-employee relationships remains a vexatious issue in workers’ compensation claims. Reviewing courts have used many factors to aid in this determination.

Whether Petitioner is classified as an independent contractor or an employee determines whether Petitioner is entitled to benefits under the Act. *Earley v. Industrial Com’n*, 197 Ill. App. 3d 309, 554 N.E.2d 1112 (1990); see also *Roberson v. Industrial Com’n*, 225 Ill. 2d 159 (2007) (noting that an employment relationship is a prerequisite for an award of benefits under the Act). It is well established that, “[f]or purposes of the Act, the term ‘employee’ should be broadly construed.” *Esquinca v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (1st) 150706WC, ¶ 48, 401 Ill.Dec. 812, 51 N.E.3d 5. Although “[n]o rigid rule exists regarding whether a worker is an employee or an independent contractor,” several criteria are relevant to consider in making this determination. *Labuz v. Illinois Workers’ Compensation Comm’n*, 2012 IL App (1st)

113007WC, ¶ 30, 366 Ill.Dec. 949, 981 N.E.2d 14. “The single most important factor is whether the purported employer has a right to control the actions of the employee.” *Ware v. Industrial Comm’n*, 318 Ill. App. 3d 1117, 1122, 252 Ill.Dec. 711, 743 N.E.2d 579 (2000) (citing *Bauer v. Industrial Comm’n*, 51 Ill. 2d 169, 172, 282 N.E.2d 448 (1972)).

Here, the evidence demonstrates that Petitioner was an employee of Respondent and under the purview of the Act. Respondent exercised control over Petitioner while Petitioner was engaged in work on behalf of Respondent. Respondent had the right to discharge Petitioner at any time. Respondent set Petitioner’s work schedule by dictating where and when Petitioner was required to complete the security escorts. Further, Respondent directed Petitioner as to how the security escort was to be completed once Petitioner arrived at the location at the designated time. Respondent required Petitioner to check in with Williams when Petitioner was routed to a location; then upon arrival Petitioner was required to confirm his arrival by signing a book at the location; then Petitioner was required to wait for the currency exchange employee to lock up; and then Petitioner was required to stand behind the currency exchange employee while she locked the door. Petitioner was directed to watch his surroundings and look left and right and in front. Then Petitioner was required to walk the currency exchange employee to her vehicle, watch her get into her vehicle, and watch her pull off. Only then would the work at that location be completed and Petitioner could embark to the next location. Moreover, Petitioner was required to report completion of the assignment to Williams.

Respondent exerted further control on how Petitioner was to perform his duties when one of Respondent’s customers criticized Petitioner’s performance of the security escort. In response, Williams further instructed Petitioner on how to perform the security escort service. Moreover,

Respondent instructed Petitioner that he could not have anyone else accompany him when performing security escorts.

Respondent's right to control Petitioner and its actual control of Petitioner support a finding that Petitioner was an employee of Respondent.

Another criterion "of great significance" is the nature of Petitioner's work in relation to Respondent's general business. *Id.* (citing *Ragler Motor Sales v. Industrial Comm'n*, 93 Ill. 2d 66, 71, 66 Ill.Dec. 342, 442 N.E.2d 903 (1982)). A worker whose services form a regular part of the cost of the product, and whose work does not constitute a separate business which allows a distinct channel through which the cost of an accident may flow, is presumptively within the area of intended protection of the Act. *Id.* Also see *Kirkwood v. Industrial Com.* (1981), 84 Ill.2d 14, 22, 48 Ill.Dec. 556, 416 N.E.2d 1078; *Alexander v. Industrial Com.*, 72 Ill.2d 444 (1978); *Coontz v. Industrial Com.*, 19 Ill.2d 574 (1960); 1C A. Larson, *Workmen's Compensation* sec. 43.51, at 8–17 (1980). Here, the evidence is that Respondent's sole business is in providing security escorts. Petitioner personally performed these services on behalf of Respondent and dedicated his time to Respondent when completing Respondent's assignments on Respondent's schedule. Petitioner's work on behalf of Respondent did not constitute a separate business which allowed for a distinct channel through which the cost of an accident may flow. Petitioner did not hold himself out for hire by other security services, did not provide security escorts to companies, did not have business cards, did not have a website, and did not have to bid for Respondent's work. The Illinois Supreme Court noted that a worker who does not hold himself out to the public as performing an independent business service, and regularly devotes all or most of his independent time to the employer, is probably an employee, regardless of other factors. *Bob Neal Pontiac-Toyota, Inc. v.*

Industrial Com'n, 89 Ill.2d 403 citing (1C A. Larson, Workmen's Compensation sec. 45.31(a), at 8-175 (1980).

The evidence that Respondent did not withhold taxes and issued a 1099 report citing “independent contractor” is neither significant nor determinative. *Kirkwood Brothers Construction v. Industrial Com'n.*, 72 Ill.2d 454, 459, 21 Ill.Dec. 370, 381 N.E.2d 697 (1978); *Luby v. Industrial Com.*, 82 Ill.2d 353, 359, 45 Ill.Dec. 88, 412 N.E.2d 439 (1980). While this evidence leans in favor of Respondent, it does not overcome the evidence of Respondent’s control over Petitioner’s work and the nature of the work Petitioner undertook for Respondent.

Regarding issue (C), whether an accident occurred that arose out of and in the course of Petitioner’s employment with Respondent, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment.

It is not credibly disputed that Petitioner was injured while he was engaged in providing a security escort on November 12, 2022. It is not disputed that his injuries include suffering a gunshot wound to the abdomen requiring medical and surgical care and hospitalization. It is not disputed that Petitioner would not have been so injured if he had not assigned by Respondent to undertake the security escort services at the time and location so directed by Respondent.

Respondent argues that Petitioner had completed his duties once the currency exchange employee had entered her vehicle. However, the video shows that the assailant had drawn his weapon and fired at Petitioner simultaneously as the currency exchange employee was entering her vehicle. Furthermore, the evidence is that Petitioner’s duties included waiting at the location

until the currency exchange employee had entered her vehicle and driven off from her parking spot.

The Arbitrator finds the shooting arose out of and in the course of Petitioner's employment with Respondent.

Regarding issue (D), the Date of the Accident, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner presented sufficient, credible evidence that the accident occurred on November 12, 2022. Petitioner's un rebutted testimony was corroborated by Petitioner's medical records which reflect a date of injury of November 12, 2022.

Regarding issue (E), whether timely notice of the accident was given to Respondent, the Arbitrator finds as follows:

The Arbitrator finds that Respondent was given notice of the accident within the time limits stated in the Act.

The Act requires Petitioner to report the accident to Respondent either orally or in writing within 45 days of the occurrence. Petitioner satisfied the notice requirement. The accident occurred on November 12, 2022. Text messaging between the parties admitted into evidence demonstrates that as early as November 29, 2022 Respondent was aware of the accident and acknowledged Petitioner's request that a worker's compensation claim be opened for Petitioner. Moreover, Williams testified that he was contacted about the shooting and he had reviewed a police report about the occurrence.

The Arbitrator further notes that the Application for Adjustment of Claim and a certificate of service in this case were filed indicating service of same on the Respondent by on December 12, 2022, within 45 days of the occurrence.

Regarding issue (F), whether Petitioner's condition of ill-being is causally related to his injury, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner's current condition of ill-being is causally connected to this injury.

The video of the event, Petitioner's medical records, and Petitioner's testimony credibly demonstrate that his current condition of ill-being is directly related to and causally connected to being shot in the abdomen, sustaining a variety of internal injuries, undergoing significant surgical procedures, and currently suffering from abdominal pain, cramping, back pain, diarrhea, fatigue, loss of lifting ability and endurance. The evidence further demonstrates that Petitioner suffered loss of his left kidney, suffered loss of a portion of his colon, and under two significant abdominal surgeries and a third procedure to treat an abscess that formed internally at or near the area of injury.

Regarding issue (G), Petitioner's earnings, the Arbitrator finds as follows:

Petitioner testified that at the time of the accident on November 12, 2022 he had two jobs. Starting at the end of August 2022 petitioner began working at Grifols Biomat Plasma in Maywood, Illinois, as a donor technician, working 40 hours per week and earning \$17.75 per hour. Based upon the testimony, it can be calculated that Petitioner's earnings at Grifols Biomat

from approximately September 1, 2022 through November 11, 2022 (10 and 2/5 weeks) were \$7,384 in 2022 and he had an average weekly wage of \$710.

To calculate Petitioner's average weekly wage for Respondent, Arbitrator finds the most accurate way is to find that Petitioner worked from approximately February 14, 2022 through August 28, 2022 for 28 weeks and from approximately October 6, 2022 through the date of accident, November 12, 2022, 5 and 3/7 weeks, for total weeks worked of 33 and 3/7 weeks, based on Williams's testimony. Petitioner testified he worked 7 days a week for Respondent. Respondent's Exhibit 2 shows that Petitioner made \$7,588.00 in 2022. Taking \$7,588.00 divided by 33 and 3/7 for total weeks worked elicits an average weekly wage of \$226.99 calculated pursuant to Section 10 of the Act.

Petitioner's average weekly wage based upon earnings with Respondent and Grifols Biomat Plasma total \$936.99. Petitioner's earnings in 2022 were \$14,972.00.

Regarding issue (H), Petitioner's age, the Arbitrator finds as follows:

The Arbitrator finds that at the time of the injury, Petitioner was 47 years old. This is based upon the un rebutted and credible testimony of Petitioner.

Regarding issue (I), Petitioner's Marital Status, the Arbitrator finds as follows:

The Arbitrator finds that at the time of the injury, Petitioner was unmarried and had zero dependent children based upon the un rebutted and credible testimony of Petitioner.

Regarding issue (J), whether the Medical Services provided were Reasonable and Necessary, and whether Respondent paid all appropriate charges, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner incurred \$194,627.95 in medical bills based upon the certified billing from Mount Sinai Hospital admitted into evidence. The undisputed testimony is that Respondent paid no benefits to Petitioner or paid no medical charges incurred by Petitioner. The Arbitrator finds these charges to be reasonable, necessary and related to the work accident.

Regarding (K), Temporary Benefits are due, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner was unable to work and directed by his physicians to remain off work from November 12, 2022 through February 14, 2023. That period of time represents 13 and 4/7 weeks. The decision is supported by the medical records, the off-work notes in evidence, and testimony of Petitioner. TTD is calculated to be two-thirds of the AWW (\$936.99) being \$624.66 per week or \$8,477.26 for 13 and 4/7 weeks.

Regarding issue (L), the Nature and Extent of the injury, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner has sustained Permanent Partial Disability in the amount of 40% loss of use of his person as a whole.

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.

As to the second factor, Petitioner's occupation at the time of injury was as a security escort, requiring physical mobility and the ability to protect others. The severity of his injuries has impacted his ability to perform work. He now works in a less stressful environment where safety is not an issue. Due to his constant diarrhea and digestive tract issues, he must work in a position that gives him ample access to a restroom. His transition to working in a halfway house as a counselor is physically and mentally less demanding and meets Petitioner's reduced abilities. This factor is given greater weight.

The third factor, Petitioner's age at the time of injury (47), is significant because he was relatively young when sustaining these life-altering injuries. He faces many years of living and working with the effects of his permanent injuries and limitations. This factor is given greater weight.

Concerning the fourth factor, there was no evidence presented of a reduced future earning capacity and therefore this factor is given no weight.

With regard to the fifth factor, evidence of disability corroborated by treating medical records, the medical records document severe injuries requiring multiple surgeries including a midline laparotomy, removal of his left kidney, partial removal of his colon, and repair of his diaphragm. He developed complications including a retroperitoneal abscess requiring additional surgery. His treatment generated medical charges totaling \$194,627.95.

The medical records further document ongoing permanent conditions including consistent abdominal pain and cramping, chronic diarrhea requiring medication, limited lifting ability, reduced stamina and mobility, back pain, and limited standing tolerance. Petitioner has permanent surgical scarring and has lost a vital organ and a portion of his digestive tract. Additionally, he experiences ongoing psychological trauma from the incident, including sleep disruption due to tremors and daily mental distress. This factor is given greater weight.

Based on consideration of these five factors, with particular emphasis on Petitioner's age and the extensive medical evidence of permanent impairment, the Arbitrator finds that Petitioner has sustained substantial permanent partial disability as a result of his work injury. The severity of his disability is particularly significant given the loss of his kidney, permanent alterations to his digestive system, ongoing pain and functional limitations, impact on his ability to work and perform daily activities, and the psychological trauma he continues to experience. The evidence supports the finding of permanent partial disability in the amount of 40% loss of use as a person as a whole.

Regarding issue (M), Penalties, the Arbitrator finds as follows:

No Petition for Penalties or supporting evidence was submitted into the record. No penalties are awarded.

Regarding issue (N), whether Respondent is due any Credit, the Arbitrator finds as follows:

The Arbitrator finds that Respondent-Employer is not entitled to a credit as no evidence of any entitlement to a credit was entered into evidence.

Regarding issue (O(1)), whether the Injured Workers' Benefit Fund is Liable, the Arbitrator finds as follows:

The Illinois State Treasurer as ex officio custodian of the Injured Workers' Benefit Fund was named as a party respondent in this matter. Section 4 of the Workers' Compensation Act provides that the Fund is liable to pay benefits to an injured worker where the Respondent has failed to obtain insurance, and where Respondent has failed to pay benefits due. Petitioner submitted sufficient credible evidence by means of a certification from the National Council on Compensation Insurance Certificate demonstrating that Respondent-Employer was not insured at the time of the injury. Further, Petitioner provided sufficient credible evidence that notice of the proceedings were provided to the Respondent-Employer. Respondent-Employer was represented by counsel at the hearing.

Accordingly, the Arbitrator enters this award against the State Treasurer as *ex officio* custodian of the Injured Workers' Benefit Fund. Respondent-Employer shall reimburse the Injured Workers' Benefit Fund for any compensation paid to the Petitioner from the Injured Workers' Benefit Fund. The Employer-Respondent's obligation to reimburse the IWBF, as set forth above, is in no way limited or modified and is entirely independent and separate from

Employer-Respondent's potential liability for fines and penalties set forth in the Act for its failure to be properly insured.

Regarding issue (O(2)), regarding Respondent's position that at the time of the injury, Petitioner was a felon in possession of a handgun unlawfully and without any legal authorization, the Arbitrator finds as follows:

The Arbitrator finds Respondent's claim that that petitioner was a felon in possession of a handgun unlawfully to be without evidentiary support and even if supported by the evidence, does not constitute a defense under the Act.

No evidence was presented indicating that Petitioner had a felony conviction. Petitioner did admit that he was carrying a concealed firearm in his jacket pocket for personal protection on November 12, 2022. Petitioner removed his weapon from his pocket and fired it at the assailant only after being shot in the abdomen by the assailant. At no time did Petitioner provoke the shooting with words, actions, or by brandishing his firearm. The fact that Petitioner had a concealed firearm on his person did not cause him to be shot. The assailant, who likely was attempting to rob the currency exchange, was the sole cause of Petitioner's injuries.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC018074
Case Name	Sybil C Thomas v. Circuit Court of Cook County Juvenile Justice Division
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0477
Number of Pages of Decision	8
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Cameron Clark
Respondent Attorney	Danielle Curtiss, Mark Rusin, Derrick Lloyd

DATE FILED: 11/24/2025

/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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SYBIL THOMAS,

Petitioner,

vs.

NO: 14 WC 18074

CIRCUIT COURT OF COOK COUNTY,
 JUVENILE JUSTICE DIVISION and
 STATE OF ILLINOIS, ILLINOIS
 COURTS/ADMINISTRATIVE OFFICE
 OF THE ILLINOIS COURTS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent Circuit Court of Cook County, Juvenile Justice Division (hereinafter "the County"), and notice given to all parties, the Commission, after considering the issues of employee-employer relationship, accident, causal connection, medical expenses and permanent partial disability (PPD) benefits, and being advised of the facts and law, reverses the Decision of the Arbitrator.

The primary issue in this claim pertained to Petitioner's employer on the date of accident, March 6, 2013. Petitioner timely filed an Application for Adjustment of Claim (hereinafter "application") on May 28, 2014 naming only the County. The application was amended on January 7, 2019 to add the Respondent State of Illinois (hereinafter "the State"). For the reasons stated below, the Commission finds that the State, and not the County, was Petitioner's employer on March 6, 2013. However, since the State was added to the claim after the expiration of the statute of limitations provided in Section 6(d) of the Act, Petitioner's claim for benefits was time-barred.

FINDINGS OF FACT

On March 6, 2013, Petitioner was an associate judge working at the Circuit Court of Cook County's Juvenile Justice Division. (T.41-42). The State paid her salary of \$172,000.00 per year and the County provided an annual \$500.00 stipend. Petitioner also elected to receive health insurance coverage through the State. She had the option of receiving coverage through the County but turned it down. (T.42-44; T.49-50; T.74; PX6; RX1; RX9). The County's witness, Deanna

Zalas, Director of Risk Management for Cook County Government, confirmed Petitioner's eligibility for the stipend and medical benefits. (T.132; T.135-137; T.139-140).

Petitioner testified that on March 6, 2013, Patricia Martin was her presiding judge and she provided Petitioner with her case docket. She also stated that the Chief Judge of Cook County, Timothy Evans, his office, and the County human resources department controlled her work assignments and docket activities. (T.45-48). Petitioner further testified that the County hired and assigned her support staff. (T.46-47). Vacation or sick time/benefits were reported to the presiding judge's assistant who shared that information with the Chief Judge's office. (T.48-49).

Petitioner was injured at work on March 6, 2013, after leaving the parking lot designated for judges. She was walking down a walkway that led directly from the parking lot into the building. Petitioner stated that the walkway had been painted with oil-based paint, and the walkway was slick with areas of broken concrete. Petitioner fell and hit her back. (T.50-52).

Petitioner orally notified Judge Martin about her fall the next day and was given an accident report to complete. (T.52-53; T.68; T.74-75). The Employee's Accident Report was on a Cook County form and documented that an oral report of the injury was given on March 13, 2013, that the accident date was March 12, 2013, and that Petitioner had fallen on the white painted walkway while coming into the building from the judges' parking lot. The signature line had Petitioner's name and the report was dated May 24, 2013. (PX4). Petitioner was not aware of any posted notifications at work regarding how to report workplace injuries. (T.54-55).

Petitioner denied having any injuries, accidents or treatment involving her lumbar spine prior to March 6, 2013. (T.44). Beginning March 19, 2013, Petitioner treated with Drs. Aaron Rosenberg and Howard An at Midwest Orthopaedics at Rush. She completed an MRI of the lumbar spine on April 9, 2013. Dr. An noted moderate to severe stenosis at L4-5 and spondylolisthesis at L4 and L5. Petitioner treated conservatively with prescription medication and physical therapy. (T.56-59; PX1; PX3). The October 1, 2013 Discharge Summary from Accelerated Rehabilitation stated that Petitioner felt a vast improvement in her low back and leg symptoms. She had no pain, numbness or tingling in her legs but they still felt heavy. Petitioner continued to use her walker due to limited endurance. (T.57-58; PX2). She denied sustaining any new injuries or accidents to her left leg or lumbar spine since the accident, "but I still do have pain even to this day." (T.62). Petitioner currently took Aspirin for her symptoms. (T.62-63).

Petitioner testified that after she amended her application on January 7, 2019 to include the State, the State provided her with an accident report to complete. (T.60-61; T.69-72; PX7). The information on the Workers' Compensation Employee's Notice of Injury form, dated February 28, 2019, was similar to the May 24, 2013 accident report. (PX5; RX6). Petitioner could not recall where she obtained the form, but explained that she was prompted to complete it after learning that the County did not consider her an employee. (T.61; T.75-77; PX5; RX6). She denied being notified that she was not considered a County employee between March 6, 2013 and May 2018 (when the State's Attorney for the County researched Petitioner's employment status). (T.56; T.66-67). Petitioner testified that she was also not aware and did not know that she was a State employee during this same period. (T.60).

The State's Exhibit 4 contained a letter, dated January 30, 2019, from the State's insurer, Tristar, to Petitioner. The letter confirmed that Tristar had been advised of Petitioner's March 6, 2013 injury. (State's Ex. 4). The claims adjuster, Adam Marty, also emailed Barbara Black, the Human Resources Manager of the Administrative Office of the Illinois Courts, on January 30, 2019, asking for more information regarding the accident and Petitioner's injury. Ms. Black responded that she had not been aware of Petitioner's claim until she received the amended application on January 11, 2019. (RX3).

As of the arbitration date, Petitioner continued to work in the same position for the Cook County Juvenile Court in the Child Protection Division. (T.62-63). She denied taking time off from work for her injury. (T.53-54; T.61-64).

The County called Kirstjen Lorenz to testify. She was the workers' compensation manager for Cook County Risk Management and she began working for the County on May 20, 2013. (T.80; T.82). Ms. Lorenz testified that Petitioner's claim was opened on June 13, 2013, "[a]nd that's when the adjuster started to work on it. I can't add anything more specific than that." (T.89-90; T.102-103; T.110-111; T.118; T.128-129; PX10). She testified that attempts were made to interview Petitioner between June 14 and July 8, 2013, but Petitioner refused to provide any additional information because she was apparently busy. (T.90-92). Ms. Lorenz denied having any notes that Petitioner contacted her office between July 8, 2013 and May 28, 2014, the date the application was filed. She also did not have any records that Petitioner requested payment of benefits during this period and there were no requests for payment from any medical provider. (T.92; T.94-95).

Ms. Lorenz testified that the State's Attorney for workers' compensation first notified her office about Petitioner's application on September 25, 2017. (T.96-97). She confirmed that no workers' compensation benefits had been paid and there were no requests for payment by anyone between May 28, 2014 and September 25, 2017. (T.97-98).

Ms. Lorenz next testified regarding an email from Cynthia Ashford Hollis, an Assistant State's Attorney with the Cook County, Illinois Industrial Claims Division. (T.98). This email was not entered into evidence, but Petitioner's Exhibit 8 was a letter, dated May 14, 2018, from Ms. Hollis to Petitioner's attorney stating that Cook County Circuit Court judges were state employees. The letter further explained that judges who were injured at work were to follow-through with the State's workers' compensation program. (T.99; PX8).

Ms. Lorenz additionally testified that notices regarding how to report a workplace injury were provided on their website. (T.115-116). She also explained that when they receive a claim, it is entered into their system regardless of whether it involves an employee or not. Their claims system then connects to the employee benefits system. Ms. Lorenz testified that the employee benefits system did not list Petitioner as an employee of the County. She also testified that due to the volume of claims, Petitioner would not have necessarily been contacted immediately about her employment status, but when they did attempt to reach out to her, she had declined to speak with them. (T.119-120; T.122-126).

The County offered into evidence copies of the Illinois Constitution, the Circuit Courts Act (705 ILCS 35) and the Associate Judges Act (705 ILCS 45). (Resp. County's Ex. 1).

CONCLUSIONS OF LAW

Although Petitioner timely filed her application against the County, the County denied any employment relationship. The State, on the other hand, stipulated on the Request for Hearing form (and confirmed on the record and in its Brief) to an employment relationship but argued that Petitioner's claim against it was barred by the statute of limitations.

With respect to this stipulation between Petitioner and the State, Section 9030.40 of the Commission's Rules states that "[t]he completed Request for Hearing form, signed by the parties (or counsel), shall be filed with the Arbitrator as the stipulation of the parties and a settlement of the questions in dispute in the case." The Request for Hearing form is binding on the parties as to the claims made therein. *Walker v. Indus. Comm'n*, 345 Ill. App. 3d 1084, 1088 (2004). Despite the stipulation, the State also argued that a stipulation is conclusive so long as it stands, and cited to cases decided long before *Walker* (*Domagalski v. Indus. Comm'n*, 97 Ill. 2d 228 (1983), citing to *General Electric Co. v. Indus. Comm'n*, 411 Ill. 401 (1952)).

The Commission finds that the evidence sufficiently supported the stipulation that the State was Petitioner's employer on March 6, 2013, particularly the various provisions of the Illinois Constitution, the Circuit Courts Act and the Associate Judges Act. For example, Article VI of the Constitution established, *inter alia*, the procedure for and number of associate judge appointments, specified their terms of office, described certain prohibited activities, and designated that judicial salaries (which included associate judges) would be paid by the State. The Constitution additionally established that the Judicial Inquiry Board would conduct investigations and receive or initiate complaints concerning associate judges. Further review of these documents showed that the State created and controlled the 25 circuit courts covering the various counties in Illinois as well as circuit court judges (such as the presiding judge and Chief Judge). Any emphasis on the nomenclature of the Cook County Circuit Court to confer an employment relationship between Petitioner and the County is in error. The referenced documents demonstrated that Petitioner and all Circuit Court associate judges were employees of the State. The stipulation between the State and Petitioner is sound.

Petitioner offered a different theory in support of a viable claim against the right party, and alleged that the County and State had a loaning-borrowing arrangement. Section 1(a)(4) of the Act states:

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 where such borrowing employer does not provide or pay the benefits or payments due such injured employee, such loaning employer is liable to provide or 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 . . . 820 ILCS 305/1(a)(4).

The Commission finds no testimony or evidence to support Petitioner's assertion that the State and County were operating as loaning and borrowing employers.

The Commission next considers whether Petitioner's claim against the State can overcome the statute of limitations defense. Section 6(d) of the Act states that unless the application is filed with the Commission "within 3 years after the date of the accident, where no compensation has been paid, or within 2 years after the date of the last payment of compensation, where any has been paid, whichever shall be later, the right to file such application shall be barred." 820 ILCS 305/6(d). Petitioner did not file her claim against the State until January 7, 2019, nearly six years after the March 6, 2013 accident date, and there was no evidence that workers' compensation benefits were paid on behalf of Petitioner in order to toll the statute of limitations. Pursuant to Section 6(d) of the Act, Petitioner's right to file an application against the State was barred.

The Commission does note, and seeks to clarify for the record, that Section 9020.20(e) of the Commission's Rules allows a claimant to amend an application prior to a hearing on the merits, which Petitioner did in this case. However, where an administrative rule conflicts with the Act, the Act prevails. *Greaney v. Indus. Comm'n*, 358 Ill. App. 3d 1002, 1026 (2005). The Commission finds that Petitioner was still required to adhere to Section 6(d) of the Act when amending her application to add the State, a different party altogether.

A claim may yet survive an untimely amendment depending on the type of amendment. An amendment involving a misnomer can be corrected at any time, even after the statute of limitations had run. *Ill. Inst. of Tech. Research Inst. v. Indus. Comm'n*, 314 Ill. App. 3d 149, 156 (2000). A misnomer is, "a mistake in name or the provision of an incorrect name to the person in accusation or pleading. It means nothing more than that a party is styled in other than his or her own name." *Id.* Misnomer occurs when "actual notice of the suit is given to the real parties in interest but the complaint does not refer to a person by his or her correct name." *Id.* In other words, "[a]ll parties were fully aware of the identities of the actual litigants, an actual plaintiff existed, defendant was aware of the actual plaintiff because it made certain demands upon it, and defendant suffered no prejudice." *Id.* "Misnomer must be distinguished from mistaken identity." *Id.* "Where misnomer occurs (plaintiff sues the right party under the wrong name), plaintiff can simply correct the mistake . . . if mistaken identity occurs (plaintiff sues the wrong party), amendment must meet the requirements of the relation back provision . . ." *Id.*

In this case, Petitioner filed her workers' compensation claim against the wrong party entirely and cannot simply correct the mistake. Instead, Petitioner's 2019 amendment to the application must satisfy all the requirements of the relation back doctrine under Section 2-616(d) of the Code of Civil Procedure, which is applicable to workers' compensation claims. *Ill. Inst. of Tech. Research Inst. v. Indus. Comm'n*, 314 Ill. App. 3d 149, 154-156 (2000). Under Section 2-616(d), Petitioner's amended application would relate back to the original application if:

- (1) the time prescribed or limited had not expired when the original action was commenced;

(2) the person, within the time that the action might have been brought or the right asserted against him or her plus the time for service permitted under Supreme Court Rule 103(b), received such notice of the commencement of the action that the person will not be prejudiced in maintaining a defense on the merits and knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him or her; and

(3) it appears from the original and amended pleadings that the cause of action asserted in the amended pleading grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or some other matter which is a necessary condition precedent to the right of recovery when the condition precedent has in fact been performed, and even though the person was not named originally as a defendant.

The Commission finds that Petitioner failed to meet the second prong of Section 2-616(d). There is no testimony, evidence or other indication that the State, within the three-year statute of limitations (from March 6, 2013 through March 6, 2016), received notice or otherwise knew of Petitioner's application against the County. The Commission further finds Petitioner's testimony that she notified Judge Martin of her injury only constituted notice of a potential workplace injury – not the commencement of an action. As such, the relation back doctrine is of no avail.

Finally, a statute of limitations is an affirmative defense that may be waived by the parties and is open to equitable considerations. *Eschbaugh v. Indus. Comm'n*, 286 Ill. App. 3d 963, 964-65 (1996). Petitioner raised such arguments pertaining to estoppel and the doctrine of laches.

Equitable estoppel "is invoked to effectuate justice by precluding a party from benefiting from their own wrongdoing." *Tegeler v. Indus. Comm'n*, 173 Ill. 2d 498, 505 (1996). First, there is no evidence that the State, the proper Respondent in the case at bar, conducted itself in any manner or made any representations at any time that caused Petitioner to miss filing her claim against the State within the statute of limitations period. Second, the Commission finds no evidence that the County engaged in any conduct recognized by our case law that would support estoppel. There was no evidence that the County acted or made representations with the obvious intent or purpose to influence the claimant to follow a certain course of conduct to his or her detriment. *George Young & Sons, Inc. v. Indus. Comm'n*, 66 Ill. 2d 220 (1977) (making misrepresentations that induced a claimant to agree to a settlement amount and not later paying it or misstating the nature of certain compensation); *Baudette by Baudette v. Ill. Indus. Comm'n*, 308 Ill. App. 3d 188 (1999) (misrepresenting that the claimant did not have a claim for further benefits or engaging in misleading conduct close to the expiration of the statute of limitations to lull the employee into a false sense of security and delay him from filing a claim). Furthermore, there is no evidence that the County and the State were ever in communication during the relevant period

regarding Petitioner's claim. The Commission finds that the doctrine of equitable estoppel cannot be invoked against the State or the County.

The doctrine of laches, a common law concept not often used in workers' compensation claims, "precludes recovery by a party whose unreasonable delay in bringing suit prejudices the rights of the opponent." *Marshall v. Metro. Water Reclamation Dist. Ret. Fund*, 298 Ill. App. 3d 66, 74 (1998). The responsibility of exercising due diligence in pursuing this claim lies exclusively with Petitioner. *Bromberg v. Indus. Comm'n*, 97 Ill. 2d 395 (1983). Here, it was Petitioner who delayed asserting her claim against the State, and the Commission finds Petitioner's argument that the County's five-year delay in informing her that she was not their employee not only unreasonable but at odds with *Bromberg*. Moreover, Petitioner undoubtedly knew that nearly all her monthly pay and benefits were paid by the State, not the County. The Commission finds that the doctrine of laches cannot be invoked against the State or County.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed on January 21, 2025, is hereby reversed for the reasons stated above. The Commission finds that the State of Illinois was Petitioner's employer on March 6, 2013, and not the Circuit Court of Cook County, Juvenile Justice Division. The Commission also finds that Petitioner filed her Application for Adjustment of Claim against the State after the expiration of the statute of limitations provided for in Section 6(d) of the Act. Petitioner's claim for benefits is therefore time-barred.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of workers' compensation benefits is hereby vacated in its entirety.

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

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

Based upon the Commission's determination that the State of Illinois was Petitioner's employer on the date of accident (March 6, 2013), the Circuit Court of Cook County, Juvenile Justice Division is hereby dismissed from this claim. No appeal bond will be set in this case as claims against the State of Illinois are not subject to judicial review. 820 ILCS 305/19(f)(1).

November 24, 2025

CAH/pm

O: 10/16/25

052

/s/ Christopher A. Harris

Christopher A. Harris

/s/ Maria E. Portela

Maria E. Portela

/s/ Marc Parker

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC020040
Case Name	Nicholas Cody v. City of Springfield Public Works/Oak Ridge Cemetery
Consolidated Cases	24WC020042
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0478
Number of Pages of Decision	28
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Steven Berg
Respondent Attorney	Kenneth Bima

DATE FILED: 11/24/2025

/s/ Frank Soto, Commissioner

Signature

24 WC 20040

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 SANAGAMON

☒ 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NICHOLAS CODY,

Petitioner,

vs.

NO: 24 WC 20040

CITY OF SPRINGFIELD,

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, causation, temporary total disability benefits, and medical expenses both current and prospective, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 26, 2025 is hereby affirmed and adopted.

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

24 WC 20040

Page 2

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

NOVEMBER 24, 2025

FJS/dw

O-11/5/25

46

/s/ *Frank J. Soto*

Frank J. Soto

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC020040
Case Name	Nicholas Cody v. City of Springfield Public Works/Oak Ridge Cemetery
Consolidated Cases	24WC020042
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Steven Berg
Respondent Attorney	Kenneth Bima

DATE FILED: 3/26/2025

/s/Linda Cantrell, Arbitrator
Signature

INTEREST RATE WEEK OF MARCH 25 2025 4.09%

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)

Nicholas Cody

Employee/Petitioner

v.

City of Springfield Public Works/Oak Ridge Cemetery

Employer/Respondent

Case # **24** WC **020040**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Springfield**, on **2/28/25**. 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 **Number of dependent children.**

FINDINGS

On the date of accident, **5/24/24**, 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 **\$43,413.76**; the average weekly wage was **\$834.88**.

On the date of accident, Petitioner was **40** years of age, *single* 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 **\$0** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** in 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 did not sustain an accident that arose out of and in the course of his employment, Respondent is not liable for payment of medical bills, prospective medical care, or temporary total disability benefits, and all benefits are denied herein.

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

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



MARCH 26 2025

Arbitrator Linda J. Cantrell

STATE OF ILLINOIS)
) SS
 COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

NICHOLAS CODY,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 24-WC-020040
	)	
CITY OF SPRINGFIELD PUBLIC	)	Consolidated Case No.: 24-WC-020042
WORKS/OAK RIDGE CEMETERY,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Springfield on February 28, 2025, pursuant to Section 19(b) of the Act. On 7/23/24, Petitioner filed an Application for Adjustment of Claim alleging injuries to his right index finger as a result of picking up limbs and brush on 5/23/24. (Case No. 22-WC-020042, AX3). On 7/23/24, Petitioner filed an Application for Adjustment of Claim alleging injuries to his back, neck, and other related areas as a result of hitting a pothole while on a lawn mower on 5/24/24. (Case No. 24-WC-020040, AX4).

The issues in dispute in Case No. 24-WC-020040 are accident, causal connection, average weekly wage, number of dependents, medical expenses, temporary total disability benefits, and prospective medical treatment. The Arbitrator has simultaneously issued a separate Decision in Case No. 22-WC-020042.

TESTIMONY

Petitioner was 40 years old, single, with three alleged dependent children at the time of accident. Petitioner testified that he was hired by Respondent on 5/7/24 and performed maintenance at the Oak Ridge Cemetery. He testified that on 5/23/24, around 1:30 to 2:00 p.m., he was picking up limbs and something pricked his right index finger. He was wearing mesh gloves. Petitioner was scheduled to work 7:00 a.m. to 3:00 p.m. He completed his work shift on 5/23/24 and about an hour later his finger became swollen. Petitioner denied any symptoms in his right index finger prior to the alleged accident.

Petitioner testified that he reported the accident to his supervisor Jeff Moffett the next morning and showed him the swelling in his finger. Petitioner testified that Jeff told him everyone would lose their safety bonus if he pursued his work injury. Petitioner stated he

continued working and did not complete an accident report that day. Petitioner testified that Jeff's comment made him very anxious, and he felt cut off from everybody that overheard his comments because they were not happy with him. Petitioner admitted that prior to working for Respondent he was treating with a psychiatrist and had issues with anxiety. He stated that his anxiety was fully under control when he was hired by Respondent, but his anxiety was horrible after Jeff's comments the day after his accident.

Petitioner went to Springfield Clinic Urgent Care on the day of the accident and was prescribed Bactrim. He testified that he had an anaphylactic reaction to Bactrim while working on 5/25/24 and Mr. Moffett told him to go to the store and buy Benadryl.

Petitioner testified that on 5/24/24 he was riding a lawn mower down a hill that was slick from rain and he hit a bump that caused the mower to tip backward and forward. He testified that he was still training to ride the mower. He stated it felt like whiplash and his back was sore. Petitioner testified that he had neck symptoms prior to working for Respondent that resolved with chiropractic care. He also had an issue with his back that resolved prior to being hired by Respondent. Petitioner testified that he told Mr. Moffett about the mower incident as he was leaving work that day, but an accident report was not completed that day.

Petitioner returned to Springfield Clinic on 6/4/24 and was diagnosed with gastroenteritis. He testified that he had not been prescribed Bactrim prior to 5/23/24 and he is allergic to the penicillin family. Petitioner stated that on 6/6/24 Dr. Srinivasan "sliced his finger open". Petitioner testified that he was off work for a few days in early June 2024 due to the medication he was taking for his finger injury. He treated with Dr. Abraham in June 2024 for his finger and stated his anxiety was extreme at that time. Petitioner testified that since his conversation with his supervisor on 5/24/24 he had to resume taking anxiety medication that prevented him from operating a lawn mower.

Petitioner treated with NP Wright at Springfield Clinic on 6/28/24 for his low back and underwent x-rays of his hips and finger. Petitioner stated that a few days after his 5/24/24 accident his right hip became sore. He thought it was bruised from being jarred but his symptoms worsened. He denied any new injuries to his right hip since 5/24/24. Petitioner treated with Dr. Newman at the Orthopedic Department of Springfield Clinic in July 2024 for worsening pain in his neck, low back, and hips. When asked when he first noticed neck pain in relation to the 5/24/24 accident, Petitioner stated, "I mean it was sore all together, but was nothing like after the back pain onset it just like went up, up towards my neck and down towards the hip; going up and down". Petitioner testified that he did not sustain any new injuries to his neck after 5/24/24.

Petitioner testified that Dr. Newman prescribed Prednisone that caused extreme anxiety and he could not sleep. He treated with his primary care physician Dr. McAfee and reported his lawn mower incident to her. He stated that Respondent did not approve a CT scan that was recommended. Petitioner testified that his right index finger is sensitive to touch. He has not sustained any new injuries to his right index finger since 5/23/24.

Petitioner began treating with Dr. Cummings on 7/10/24 for his finger, neck, hips, and back. He described both accidents to Dr. Cummings. Petitioner currently has him on light duty restrictions.

Petitioner testified that he received a letter dated 7/9/24 terminating his employment with Respondent. He was a probationary employee and understood that he could be terminated for any reason during the one-year probationary period prior to becoming a union member.

When asked what his annual salary was when hired by Respondent, Petitioner stated, "I believe \$43,300 and some dollars and 76 cents". He was scheduled to work 40 hours a week. Petitioner testified that at the time of his work accidents he had three dependent children ages 10, 11, and 18. He stated that his 18-year old child was still in school.

Petitioner testified that prior to his work accidents he received psychiatric treatment from Dr. Juan Medina. He saw Dr. Medina on 4/29/24 at which time he had no signs of anxiety. He treated with Dr. Medina on 6/13/24, 8/28/24, and 1/20/25 at which time his anxiety was out of control, and he was not able to function.

Petitioner testified that an MRI of his thoracic spine and physical therapy was ordered but not approved by Respondent or Public Aid. He has constant pain in his neck that negatively affects his posture and radiates into his arms. Petitioner has back pain that worsens with climbing stairs. His pain radiates into both legs, worse on the right and into his right foot. He denied having these symptoms prior to the work accident. Petitioner testified that he has unsuccessfully searched for employment within the restrictions placed by Dr. Cummings.

Petitioner testified that he did not prepare or sign the accident reports admitted into evidence. He agreed that the descriptions of his accidents were accurate. Petitioner testified that he injured his right middle finger on 3/14/08 while employed by UPS. He also sustained a meniscus tear in his left knee on 7/31/17 while employed by Dan DeWeese Painting. He denied having any issues with his neck, back, or extremities when hired by Respondent. Petitioner testified that when he was hired by Respondent, he was able to dig, rake debris, pick up limbs, ride a lawn mower, set stones, and pour concrete. He is scheduled to follow up with Dr. Cummings on 3/23/25.

On cross-examination, Petitioner testified that prior to working for Respondent he performed painting jobs for a subcontractor. He was paid cash and worked weekly off and on over 15 years. He also worked for various autobody shops and performed autobody painting during the winter months.

Petitioner agreed that on 3/1/23 he underwent a neurology exam at Springfield Clinic and an EEG and MRI of his brain was ordered. He denied undergoing the examinations and stated the studies are now recommended for his neck and head. He agreed that on 3/1/23 he inquired

about disability for PTSD and that his anxiety was not under control at that time. He denied ever having issues holding a job due to anger. Petitioner denied that the health issues he had prior to working for Respondent had anything to do with his low back or neck. Petitioner agreed he treated with orthopedist Dr. Wolters on 3/14/23 following a fall at Buffalo Wild Wings in June 2022 and he underwent an MRI.

Petitioner testified that he may have had back pain when he treated at Springfield Clinic Prompt Care on 3/15/23 following a motor vehicle accident. Petitioner stated he underwent chiropractic care and his back and neck pain resolved. Petitioner agreed that he returned to Prompt Care on 5/19/23 with increased depressive symptoms. He testified that he was going through a breakup with his kids' mother of 20 years. Petitioner testified that he had increased depression and anxiety throughout 2023 that occasionally prevented him from working. He did not recall having a pinched nerve in his neck in February 2024.

The Arbitrator observed Petitioner's right index finger and noted an incision and scar tissue, without swelling or redness. Petitioner testified that his finger swells when he uses it, and he believes there is something inside his finger. He testified that when he poked his finger on 5/23/24 he did not think anything of it until it started to swell. When asked if he had overslept and was late for work on 5/23/24, Petitioner stated, "I don't, but I could have". He agreed that he started working at 8:41 a.m. on 5/23/24 and his accident occurred around 1:30 p.m. He completed his shift, went home to shower, and went to the emergency room at 7:00 p.m. with finger pain and swelling for the past hour. He reported his accident the next morning and continued to work that day. Petitioner was off work the next three days for the weekend and a holiday the following Monday. Petitioner returned to work on Tuesday, 5/28/24, and worked the rest of the week.

Petitioner agreed that he returned to Springfield Clinic on 6/6/24 and a callus was removed on his finger to determine if a foreign body was present. Petitioner denied telling his treating physician that he was using a shovel at the time he injured his finger.

Petitioner testified that he was in shock after his lawn mower hit a pothole on 5/24/24 and he did not notice immediate symptoms. He stated he told Mr. Moffett about the accident that afternoon in case something was wrong with the mower or him. Petitioner testified that when he spoke to Mr. Moffett he had pain in his lower back and hips from the jarring motion. He initially sought treatment for the 5/24/24 accident on 6/4/24 because his symptoms worsened. Petitioner believed he told his treating physician on 6/4/24 about the lawn mower incident and stated he mentioned the accident every time he treated. He testified that he reported low back pain on 6/4/24. He testified that his neck pain did not "come on as bad until the back started just to take over", but he did have neck pain on 6/4/24.

Petitioner testified that when he returned to urgent care on 6/6/24 he was fatigued from having a reaction to the medication for his finger. He testified that at every visit he told his treating physicians about his 5/24/24 accident, and that he had pain in his back, hip, and neck. He

agreed he saw a podiatrist on 6/27/24 for plantar warts. Petitioner denied telling chiropractor James Newman on 7/3/24 that he woke with neck pain and had no new injury. He did not recall that Chiropractor Newman released him to full duty work on that date.

Petitioner testified that he treated with Dr. Cummings prior to his work accident for a knee injury. He underwent knee surgery for a torn meniscus by another physician because Dr. Cummings was not a surgeon. Petitioner testified that he went to Dr. Cummings for his knee because “everybody else was trying to send me back to work”, and Dr. Cummings took the time to listen and diagnose a tear. Petitioner stated that is why he returned to Dr. Cummings after his work accidents with Respondent, so someone would help him.

Petitioner testified that he did not have any job interviews while searching for employment and he did not receive any replies. He did not have copies of his online applications. Petitioner testified that he goes to a restaurant bar with friends and went to California in July 2024 for his ex-girlfriend’s aunt’s funeral.

On re-direct examination, Petitioner testified that when he treats at Springfield Clinic he sees whichever doctor is available at the time. He stated that his treatment in early June 2024 was due to the side effects he had from the medication, so he did not specifically request an examination of his neck or back during those visits.

Jeff Moffett testified on behalf of Respondent. Mr. Moffett has worked at Oak Ridge Cemetery for 21 years and is currently the Superintendent of Public Works. Mr. Moffett explained that Oak Ridge Cemetery is active as it is the tourist site where President Abraham Lincoln is buried. The cemetery consists of 200 acres, 40,000 monuments, and nine miles of road. Respondent had six full-time grounds employees, 5 to 6 part-time grounds workers, and three office staff in May 2024. Mr. Moffett testified that he monitored and worked with the employees in the cemetery and he was Petitioner’s direct supervisor.

Mr. Moffett testified that new hires are put on a 7-month probationary period. He admitted that on 5/24/24, at 7:00 a.m., Petitioner told him he got something in his finger, and it was bothering him a little. Mr. Moffett stated he asked the Director of the cemetery if Petitioner had to fill out an accident report and he told him only if his finger continued to bother him or worsened. Mr. Moffett looked at Petitioner’s finger and did not “really see anything”. He stated that Petitioner worked his regular job duties from 5/24/24 through 6/10/24.

Mr. Moffett testified that he learned about Petitioner’s accident of 5/24/24 by text message approximately one month after it allegedly occurred. He did not notice any physical limitations in Petitioner after 5/24/24. Mr. Moffett testified that Petitioner performed his regular job duties after 5/24/24, which would have involved lifting 70-pound sheets of plywood, raking, and shoveling.

Mr. Moffett testified that Respondent keeps written daily logs on the lawn mowers for maintenance and usage purposes. The logs showed Petitioner mowed on 5/20/24, 6/3/24, and 6/7/24. Mr. Moffett stated he did not work Saturdays and would not have worked on 5/25/24 when Petitioner allegedly reported the lawn mower accident to him.

On cross-examination, Mr. Moffett denied that he told Petitioner the employees would lose their safety bonus when he reported his finger injury. He agreed that Petitioner reported his finger injury to him the morning after it occurred. He testified that there were four employees working grounds on 5/24/24, and three office workers where the Director has an office. The office hours are 8:00 a.m. to 4:30 p.m. and is always open. Mr. Moffett testified that the grounds employees work in pairs unless they are mowing. He testified that Respondent hires seasonal employees in late March or early April to prepare for Memorial Day. He interacts with the seasonal employees on the grounds more often than the full-times employees.

Mr. Moffett stated he did not know if Petitioner actually lifted plywood or used a shovel after 5/24/24. He testified that the handwriting on the timesheet (RX7) was his. Mr. Moffett testified that he communicated with Petitioner via text when he took off work sick from 6/4/24 through 6/6/24. He did not know why Petitioner was sick. He testified that mower logs are filled out once per week by the operator and Petitioner may have had more logs besides the once admitted into evidence. He stated that the operator may forget to fill out the mower log and it was possible Petitioner was operating the mower on 5/24/24.

Mr. Moffett testified that employees are provided with yellow cloth gloves and a pair of tan leather gloves. He encourages employees to use leather gloves when picking up brush. He testified that Petitioner was given a pair of leather gloves and he saw Petitioner wearing them multiple times on 5/23/24. He did not know which gloves, if any, Petitioner was wearing when he injured his finger on 5/23/24.

Petitioner was recalled to testify. He reiterated that he told Mr. Moffett on 5/24/24 about the lawn mower incident. Petitioner testified that he did not lift plywood or perform any heavy labor after 5/24/24. He stated he did not fill out a mower log every time he used the mower because he was a new employee and sometimes he did not know where the log was.

DOCUMENTARY EVIDENCE

On 3/1/23, Petitioner was seen at Springfield Clinic for depression. (RX5) It was noted that Petitioner was having difficulty working due to anger. He was treating with a psychiatrist and did not feel he was being listened to. He was looking for a new psychiatrist and was taking Alprazolam. It was noted that Petitioner had been worked up by neurology with an EEG and an MRI of the brain. Petitioner was wondering if he could get on disability for PTSD. He wondered if he had Ehlers-Danlos syndrome which his sister had. Petitioner reported he had difficulty healing from his shoulder and knee injury.

On 3/14/23, Petitioner presented to Springfield Clinic for follow up of his right shoulder and left knee. (RX5) It was noted Petitioner fell in June 2022 at Buffalo Wild Wings and has had pain since. He underwent six physical therapy sessions and two anti-inflammatories without relief. Petitioner underwent a subacromial injection in his right shoulder one month ago that gave him 1 to 2 weeks of relief. Petitioner stated that his shoulder pain has not recurred, but he continued to have knee pain with no relief from an injection. Physical exam revealed mild pain with Neer and Hawkins impingement testing and Speed testing of the right shoulder. X-rays and an MRI arthrogram of the right shoulder showed mild subacromial bursitis. He was referred for continued physical therapy.

On 3/15/23, Petitioner presented to Springfield Clinic for back pain following a motor vehicle accident one week ago. (RX5) He stated that a car pulled out in front of him, and he clipped their back bumper. He was a restrained driver, the airbags did not deploy, and he did not strike his head. Petitioner reported he had generalized back pain since the accident and missed a few days of work as an auto mechanic. Tylenol and Motrin provided some relief. Petitioner was prescribed Cyclobenzaprine.

On 5/19/23, Petitioner presented to Springfield Clinic with increased depression, fatigue, and sleeplessness for 48 hours. (RX5) It was noted Petitioner recently had a sore throat and mononucleosis was a concern. He was previously treated with two antibiotics. Petitioner reported increased stressors due to loss of a friend and starting a new job. Petitioner was currently taking 15 medications.

On 2/13/24, Petitioner was seen at Springfield Clinic for pain in the back of his head on the right that radiated up and over his head when he turned his neck, and a persistent sore throat. The medical record indicates 82 active problems including issues with his low, thoracic, and cervical spine, and sacral region. (RX5)

On 4/29/24, Petitioner presented to psychiatrist Dr. Juan Medina who noted Petitioner was compliant with his medications. (PX11) Dr. Medina was treating Petitioner for recurrent and moderate major depressive disorder, generalized anxiety disorder, and panic disorder. Petitioner denied any problems with anger and stated he had no change in his feelings of anxiety. He continued to feel sad, and his sleep and appetite had improved. He was instructed to continue taking Zoloft (depression), Trazodone (insomnia), Xanax (anxiety), and Vistaril (insomnia).

On 5/23/24 at 7:04 p.m., Petitioner presented to Springfield Clinic Urgent Care for right index finger pain and swelling for the past hour. (PX6, p. 1-3). Petitioner reported he was working outside clearing a lot of brush today and he noticed swelling, redness, and pain after showering tonight. He was wearing gloves and was unsure if he poked himself with a stick or some type of foliage. NP Alissa Howard noted right hand mild swelling and erythema to the volar index finger. Petitioner's finger was tender to touch with no abrasions or wounds. He was diagnosed with cellulitis of the finger and prescribed Bactrim. Petitioner reported a history of an allergy to penicillin.

Respondent's payroll records indicate Petitioner worked from 6:44 a.m. to 3:00 p.m. on Friday, 5/24/24. (RX7) Petitioner was scheduled off work on Saturday and Sunday, and he was off work on Monday, 5/27/24 due to the holiday.

On 5/28/24 at 6:17 a.m., Petitioner texted Mr. Moffett, "Hey Jeff it's Nick cody if you could give me a call back when you are able thank you". Respondent's payroll records indicate Petitioner called in with a sick child and was denied 5.5 hours of work. He worked from 12:31 p.m. to 3:00 p.m. (RX7)

Respondent's payroll records indicate Petitioner worked his full 8-hour shift on 5/29/24 through 5/31/24. (RX7) Petitioner was not scheduled to work the weekend, 6/1/24 through 6/2/24. He worked a full 8-hour shift on Monday, 6/3/24, and operated the lawn mower that day. (RX8).

On 6/4/24 at 6:27 a.m., Petitioner texted, "Hey Jeff it's Nick cody I left a message but I just wanted to make sure you got it. I won't be in today I'm sick". (RX4) Mr. Moffett replied, "Got it". Respondent's payroll records indicate Petitioner called in sick on 6/4/24 and he was denied 8 hours of work for the day. (RX7)

On 6/4/24, Petitioner returned to urgent care for vomiting and diarrhea since yesterday. (PX6, p. 4) He had some fatigue but denied fever, abdominal pain, back pain, and cold symptoms. He had no difficulty sleeping. Petitioner was diagnosed with acute gastroenteritis and prescribed Zofran. There was no mention of hip, low back, or neck complaints at this visit. Petitioner was placed off work for 2 days and released to return to work on 6/6/24. (PX10, p. 1)

Respondent's payroll records indicate Petitioner texted on 6/5/24 for being "sick" and he was denied for 8 hours of work. (RX7)

On 6/6/24 at 6:55 a.m., Petitioner texted Mr. Moffett, "Hey Jeff it's Nick cody I tried calling it's going to the vm I have the flu hopefully this is the last day of it and I will be back tomorrow. I will bring my doctor notes when I come I'm sorry for being out the last few days. Please just let me know you got this". (RX4) Mr. Moffett replied, "Yes". Respondent's payroll records indicate Petitioner texted he was sick and he was denied 8 hours of work for the day. (RX7)

On 6/6/24, Petitioner returned to urgent care with complaints of feeling tired and weak for the past three days. (PX6, p. 10) He requested a work note for more time off. He was diagnosed with acute sinusitis with worsening symptoms. Petitioner also complained of continued right index finger pain and was concerned there was a foreign body. A history of his treatment on 5/23/24 was noted and that he initially improved with Bactrim, but he recently noticed increased swelling and redness. Dr. Srinivasan injected Petitioner's finger with lidocaine and removed a callus formation on the palmar surface near the distal phalanx area. Inspection revealed no evidence of a foreign body. Additional antibiotics were prescribed. There was no mention of any hip, low back, or neck complaints at this visit. Petitioner's medication list showed his prescriptions for anxiety/depression were refilled on 8/16/23 (sertraline), 3/23/24

(hydroxyzine), 4/29/24 (trazodone), and 5/29/24 (Alprazolam). Petitioner was provided an off work slip for 6/6/24 and released to return to work on 6/7/24. (PX10, p. 2)

Respondent's payroll records indicate Petitioner worked his full 8-hour shift on 6/7/24 and operated the lawn mower on that day. (RX7) Petitioner was scheduled off work on Saturday and Sunday, 6/8/24 through 6/9/24. Petitioner worked a full 8-hour shift on 6/10/24 which was the last day he worked for Respondent.

On 6/11/24, Petitioner was seen by NP Lisa Carney in the internal medicine clinic of Springfield Clinic. (PX6, p. 13) Petitioner reported he had been to prompt care twice and he had continued fatigue and depression. He reported an allergic rash from Bactrim after about a week of use. NP Carney noted Petitioner returned to the clinic last Thursday and was prescribed Clindamycin that caused stomach issues and nausea. Petitioner reported he just started a new job at a cemetery mowing grass which had increased his allergy symptoms. Petitioner had a history of asthma and used an albuterol inhaler. He was again diagnosed with chronic sinusitis and advised to wear a mask while mowing. There was no mention of any hip, low back, or neck complaints at this visit.

On 6/11/24 at 11:28 p.m., Petitioner texted Mr. Moffett, "Hey Jeff sorry I tried to call it was going to vm but it's Nick cody I'm sorry but I will not be in today family emergency. I will have a note for you tomorrow for it". (RX4) Respondent's payroll records indicate Petitioner was running late and never came in; however, Mr. Moffett noted that Petitioner later called and texted that his girlfriend's dad was in the hospital, and he was denied 8 hours of work for the day. (RX7)

On 6/12/24 at 1:51 p.m., Petitioner texted Mr. Moffett, "Hey Jeff I'm sorry I'm just now getting with you at this time of day our family is going thru some heartache and I need to be with them rn hopefully return tomorrow". (RX4) Respondent's payroll records indicate Petitioner texted he would not be in for a family emergency. He was denied 8 hours of work for the day. (RX7)

On 6/13/24 at 6:21 a.m., Petitioner texted Mr. Moffett, "I will not be in today I will have a note or fmla for you when I get back I'm sorry". (RX4) Respondent's payroll records indicate Petitioner texted he would not be in for a family emergency. He was denied 8 hours of work for the day. (RX7)

On 6/13/24, Petitioner returned to psychiatrist Dr. Medina and stated he felt irritable and tired. (PX11, p. 3) Petitioner reported he got a new job but got sick and missed six days of work. He has been more anxious and was worried he would lose his job. Petitioner reported increased difficulty sleeping and a worsening of appetite. Petitioner reported 1 to 2 anger outbursts with increased sadness. Petitioner requested a work slip excusing him for the last six days. Dr. Medina increased his prescription for Zoloft and recommended therapy. Dr. Madina provided Petitioner with off work slips for 6/11/24 through 6/14/24 and 6/17/24 through 6/20/24 due to anxiety. (PX10, p. 3-4) He released Petitioner to return to work on 6/21/24.

On 6/14/24 at 6:32 a.m., Petitioner texted Mr. Moffett, “I will be back in on Monday I have a doctors note for all the days that I will give you on Monday. Sorry very bad week”. (RX4) Respondent’s payroll records indicate Petitioner texted he would not be in for a family emergency. He was denied 8 hours of work for the day. (RX7)

On 6/17/24 at 6:01 a.m., Petitioner texted Mr. Moffett, “I will not be in today as I’m under the care of my doctor. I will be reevaluated today or tomorrow hopefully. I have a note from all last week. I can get that to you if I can just wait until I get this weeks note”. (RX4) Mr. Moffett replied, “You have no paid time to use. This will be unpaid”. Respondent’s payroll records indicate Petitioner texted he was not feeling well, and he was denied 8 hours of work for the day. (RX7)

On 6/18/24 at 6:18 a.m., Petitioner texted Mr. Moffett, “I was will be going back to meet with my doctor today I will let you know what he says as far as when I can return”. (RX4) On 6/18/24 at 10:01 a.m., Petitioner texted Mr. Moffett, “I understand that I won’t be paid for what I have missed. But the note isn’t just for being sick or something is is for something else. What else besides a document from doctor if anything would help my situation. I have never had to be off work like this and I’m sorry if happened this way but being off has not been my decision”. (RX4) Respondent’s payroll records indicate Petitioner texted he was not feeling well, and he was denied 8 hours of work for the day. (RX7)

On 6/20/24 at 6:42 a.m., Petitioner texted Mr. Moffett, “I have been cleared to come back tomorrow. I will have all my paper work from the doctors and will have all that for you”. (RX4) Respondent’s payroll records indicate Petitioner texted he would not be in and he was cleared for work tomorrow. He was denied 8 hours of work for the day. (RX7)

On 6/21/24 at 6:15 a.m., Petitioner texted Mr. Moffett, “I will not be in today. Yesterday I was scheduled to see another doctor and to get on a different medication that medication went way wrong and he doesn’t want me operating anything until it’s out of my system I will have that note for you on Monday im really sorry about this I have never had something like this happen to me. I will be back on track next week and be ready to go”. (RX4) Respondent’s payroll records indicate Petitioner texted he was having medication problems. He was denied 8 hours of work for the day. (RX7)

On 6/21/24, Petitioner presented to Springfield Clinic, Sherman Urgent Care for a one-day history of high anxiety and depression. (PX6, p. 16-17) He continued to have right index finger pain that was sharp with movement and dull at rest. Dr. Abraham performed a physical examination and noted mild redness without significant swelling in his finger. He had normal range of motion, strength, and sensation. An x-ray of Petitioner’s finger was unremarkable. He was instructed to alternate ibuprofen and Tylenol and to continue observation of his finger. There was no mention of any hip, low back, or neck complaints at this visit. Dr. Abraham provided Petitioner with an off work slip for 6/21/24. (PX10, p. 5)

On 6/24/24, Petitioner returned to Dr. Abraham and reported anxiety and depression for several days. (PX6, p. 19-20) Dr. Abraham noted Petitioner had chronic anxiety and was a patient of Dr. Medina whom he saw last week. Petitioner reported he was under a lot of undue

stress due to his workplace questioning his absenteeism and a relationship currently. Petitioner requested behavioral therapy. Dr. Abraham diagnosed anxiety reaction and instructed him to follow up with Dr. Medina for a referral for cognitive behavioral therapy. Dr. Abraham discussed looking into FMLA to protect Petitioner's employment status. He was provided a work slip for the 6/24/24 visit. There was no mention of any hip, low back, or neck complaints at this visit.

On 6/24/24 at 8:42 a.m., Petitioner texted Mr. Moffett, "Hey there it's Nick cody I will not be in today as I'm still under the doctors care and they will have notes for you today from Friday and today and I will be reevaluated today". (RX4) Respondent's payroll records indicate Petitioner texted he was not coming in and would bring a note. He was denied 8 hours of work for the day. (RX7)

On 6/25/24 at 6:33 a.m., Petitioner texted Mr. Moffett, "I will not be there today HR has all my notes for you". (RX4)

On 6/26/24 at 2:15 p.m., Petitioner texted Mr. Moffett, "Sorry I'm just now calling in but I have been under meds from the doctor and the finger I told you that I got something in while picking up branches that day is really infected as well so I'm on meds for that". (RX4) Mr. Moffett replied, "What day was that?". Petitioner responded, "May 24 at 6:45 as soon as I got there. You told me if it got worse later on that we could report it then because other wise everyone including me would loose their safety bonus. I also told you I hit a big hole in the grave yard that is now bothering my right hip and lower back".

On 6/27/24, Petitioner was seen by a podiatrist for plantar warts to his right foot. The podiatrist completed a muscular and neurologic exam and noted Petitioner had no antalgic gait. There was no mention of any hip, low back, or neck complaints at this visit.

On 6/27/24 at 8:54 a.m., Petitioner texted Mr. Moffett, "I will not be in today as I'm still under doctors care". (RX4)

On 6/28/24 at 1:20 p.m., Petitioner texted Mr. Moffett, "I tried calling this morning to speak to you to tell you I wouldn't be in But you never called back and I forgot to text you unlike I have everyday so im texting you to tell you in writing I apparently won't be in today. I go back to the doctors today for my finger and my hip and back also today. I will update you as soon as I know something". (RX4)

On 6/28/24, Petitioner presented to the internal medicine clinic. (PX6, p. 22) The history stated, "PT had an injury to finger, PT was given antibiotics, then had allergic reaction about 5 days later. PT was pressured into not filling out work incident report. PT has been extremely depressed and anxious because of this situation. PT is still having problems with his finger. PT says he feels crippled with anxiety, stays up until 6:00 a.m. because of anxiety. Needs work note." NP Wright noted Petitioner worked at a cemetery and about a month ago he was at work using a shovel when he felt like something go into his finger. Petitioner reported that when he told his boss about his finger, his boss told him that he and the other employees would lose their safety bonus. He feels like everyone at work treats him differently now and it causes him a lot of

anxiety and he does not want to go to work anymore. Petitioner reported he had numbness in his finger and when he wakes it is swollen and red. Dr. Medina prescribed Xanax and Sertraline for his anxiety/depression and Petitioner has seen him twice this month. NP Wright ordered a CT scan of Petitioner's right hand and provided an off work slip for 6/25/24 through 6/30/24. (PX10, p. 7)

Petitioner also complained of some pain to his right hip for the past three weeks, with no radiation into his leg. Petitioner reported he was mowing, and he thinks he jarred his hip. An x-ray of the right hip was ordered. Physical examination revealed normal gait, moves all four extremities freely, no obvious deformity of the right finger with a callus-like appearance on the palmar aspect of the right index finger at the DIP joint. Petitioner appeared anxious with quick speech. NP Wright recommended that Petitioner return to his psychiatrist for cognitive behavioral therapy. She provided Petitioner with an off work slip from 6/25/24 through 6/28/24 and released him to return to work on 7/1/24. (PX10, p. 7)

On 7/1/24, NP Wright made a record entry that Petitioner was notified that the right hip x-ray was negative. (PX6, p. 25) He was instructed to apply ice/heat and take ibuprofen. Petitioner reported he was still having a lot of hip pain and was going to the orthopedic urgent care. Petitioner was advised that radiology would be calling him to schedule the CT scan of his finger.

On 7/2/24, Petitioner was seen at the orthopedic walk-in clinic by NP Lisa Lyons for right hip pain. (PX6, 28-29) The records state, "However, as I asked patient questions regarding his right hip pain, he states that it is also his left hip as well as his low back and he 'has never had pain before like this in his life'." It was further noted, "He was recently mowing Oak Lawn Cemetery on May 24 when he states he hit a hole causing a jarring injury to his low back and hip." Petitioner localized his pain to the trochanteric region, low back, and the entirety of his lower extremities, with weakness and pain while standing. Physical examination revealed diffuse tenderness across all areas of the lower spinal column, piriformis, and trochanteric regions bilaterally, painful range of motion of the low back and hips, positive flip sign bilaterally, and painful SI joint loading which NP Lyons found out of proportion to the exam. NP Lyons reviewed the right hip x-ray and found it unremarkable. She ordered lumbar spine x-rays and interpreted a possible limbus deformity of the anterior/inferior L3 region versus overlying bowel gas pattern, and very mild L5-S1 disc space narrowing with mild facet arthropathy changes. NP Lyons diagnosed low back and bilateral hip pain secondary to a reported work-related injury on 5/24/24. She again reiterated that physical examination seemed to be out of proportion to exam and she could not identify any radicular symptoms. She referred Petitioner to physical therapy for low back and trochanteric pain, prescribed Diclofenac Sodium, and ordered him to follow up in six weeks. She provided Petitioner with an off work slip for 7/2/24. (PX10, 8)

On 7/3/24, Petitioner was seen by Dr. James Newman for an orthopedic consult for neck and upper back pain. (PX6, p. 32) He noted that Petitioner was apparently mowing on 5/24/24 and ran over a hole in the ground causing a jarring injury to his entire body. Dr. Newman noted, "He now presents today for neck pain as mentioned above. He states that he simply woke up with the pain. There was no new injury that he can recall or identify." Petitioner localized pain to his right parascapular region with intermittent radiation down his arm into his hand. His pain was

sharp and increased with active range of motion of the cervical spine, which he rated 9/10. He denied any lower extremity weakness. Physical examination revealed tenderness to palpation of the cervical paraspinal musculature and levator scapulae and limited range of motion. X-rays of Petitioner's cervical spine showed mild degenerative disc disease at C5-6 and cervical lordosis suggesting muscle spasms. Dr. Newman felt that Petitioner's neck and intermittent right upper extremity pain was secondary to a cervical disc herniation. His neurological exam was unremarkable with some radiculitis symptoms. He prescribed a Prednisone taper, Cyclobenzaprine, and referred Petitioner to physical therapy with dry needling. Dr. Newman stated that Petitioner was fine to work on Friday and he did not require any restrictions. He provided Petitioner with a work slip for 7/3/24 and advised him to continue to follow up with NP Lyons in six weeks. (PX10, p. 9)

On 7/5/24, Respondent's Office of Human Resources authored a letter to Petitioner advising him to complete workers compensation claim forms. (PX2)

On 7/7/24, Petitioner returned to Springfield Clinic Urgent Care and reported continued neck and upper back pain related to workplace injury. (PX6, p. 34) He reported that the Prednisone somewhat improved his symptoms, but it caused sleeplessness and increased anxiety. He rated his neck pain 8/10. PA Elizabeth Sweitzer noted that Petitioner worked for Respondent, and he drove a lawn mower over a small hole that caused the seat to bounce and jar his back and hips. Petitioner reported constant neck pain rated 8/10 and difficulty sleeping. He reported that Respondent wanted him to return to work but he did not feel capable of completing his work duties due to pain. Petitioner denied weakness or numbness in his upper and lower extremities. PA Sweitzer performed a physical examination that revealed tenderness to palpation over the paravertebral musculature of the cervical spine and posterior shoulder with full range of motion. PA Sweitzer thought Petitioner's neck and left shoulder pain was secondary to muscle spasms and a cervical disc herniation. She prescribed Nabunetone and Tizanidine and ordered Petitioner to discontinue Prednisone and Cyclobenzaprine. Petitioner was placed off work from 7/5/24 through 7/10/24. (PX10, p. 10)

On 7/8/24, Petitioner texted Mr. Moffett, "I will not be in. The doctor has written me off til at least Wednesday for my back". (RX4)

On 7/9/24, Respondent's Civil Service Commission authored a letter to Petitioner enclosing a Notice of Probationary Discharge terminating his employment. The Notice was sent to Petitioner via certified mail on 7/9/24 and signed by Department Director Greg Tally on 6/25/24, the HR Director on 6/25/24, and the Mayor of the City of Springfield on 7/1/24.

On 7/10/24, Petitioner was examined by Dr. Alexander Cummings for severe low back, upper back, neck, hip, and right index finger pain. (PX8) Petitioner reported a history of both work accidents. He reported experiencing immediate low back pain when the front of the mower went up in the air. He stated that he reported the 5/24/24 injury to his supervisor and was told to just watch it for a while. Petitioner stated he continued to work but his anxiety increased, and his primary doctor took him off work for a couple of weeks. He has not worked since. Petitioner reported that his low back pain was severe, worse on the right, and radiated into his hip and up his back and now his upper back and neck were painful. Petitioner stated his upper neck,

especially on the right, was currently worse than his low back pain. Physical examination revealed tenderness to palpation along the paraspinal muscles and trapezius, right greater than left, with limited range of motion and pain at all end points. Dr. Cummings wanted to review Petitioner's medical records and referred him to physical therapy. Petitioner was placed off work and instructed to follow up in one week.

On 7/11/24, Petitioner texted Mr. Moffett, "I went back to the doctor yesterday and they are keeping me off work for now".

On 7/15/24, Petitioner presented to his primary care physician Dr. Kathy McAfee at Springfield Clinic for complaints of low back, bilateral hip, and neck pain. (PX6, p. 40) Dr. McAfee noted Petitioner's pain originally started after he was mowing at work and went over a hole that jarred the mower. Petitioner advised that he filed a workers' comp claim today. He reported that he saw Dr. Cummings last week who was closer to his home and is a work comp doctor. He requested a referral to Dr. Cummings. Dr. McAfee noted that Petitioner's anxiety was much worse "from all of this work comp confusion". The CT scan of his finger had not been performed because a work comp case had not been opened. Petitioner advised he would contact the workman's comp case manager to get approval. He was instructed to continue taking Tizanidine as needed for his neck and back pain. Dr. McAfee stated there was no need to refer Petitioner to Dr. Cummings since he was already treating with him.

On 7/17/24, Petitioner followed up with Dr. Cummings with unchanged complaints. (PX8, p. 15-21) Petitioner continued to take medication and muscle relaxers and his neck pain was constant. His low back pain was not constant but increased with bending and twisting. He had bilateral hip pain that increased with climbing stairs. The pad of Petitioner's right index finger continued to be painful, and he reported that if it catches on a firm area it increases his pain. Petitioner was not able to begin physical therapy at that time. Dr. Cummings placed Petitioner on light duty restrictions and refilled his pain medication and muscle relaxers.

On 8/5/24, Petitioner followed up with Dr. Cummings with unchanged symptoms. (PX8, 24) He reported sharp, constant neck pain that radiated to the top of both shoulders. His pain increased when turning his head and he had some tingling in his right arm. His low back pain was constant, but not as painful as his neck, and increased with prolonged standing and walking. He stated his hips felt bruised and painful. Dr. Cummings noted a new symptom appeared about one week ago when Petitioner had numbness in the ball of his right great toe that was constant. He also had tingling in his left foot at times. Petitioner stated he could not get into physical therapy until September and Dr. Cummings issued a new order for therapy at a different facility. Dr. Cummings noted that the symptoms in Petitioner's feet was concerning for possible central cord syndrome of the cervical spine. He ordered a cervical spine MRI and continued Petitioner's light duty restrictions.

On 8/28/24, Petitioner returned to psychiatrist Dr. Medina and reported he was taking his medications and felt groggy in the morning. His mood varied and he had some financial stress. Petitioner reported he got hurt at work. His anxiety and appetite worsened, but his sleep and sadness recently improved. Petitioner was not in therapy and was instructed to continue his medications and follow up in four months. (PX11, p. 5-6)

Petitioner followed up with Dr. Cummings on 9/11/24, 10/16/24, and 11/20/24 with unchanged symptoms. The recommended treatment had not been approved, including the cervical spine MRI and physical therapy. He continued Petitioner's light duty restrictions.

On 1/20/25, Petitioner returned to Dr. Medina and reported he has been more talkative, and he had difficulty focusing. His disorganization, attention span, sadness, sleep, and anxiety had worsened. His appetite had improved, and he had no issues associated with anger. Dr. Medina noted that Petitioner's tendency to talk excessively had worsened. (PX11, p. 7-8)

Petitioner returned to Dr. Cummings on 1/22/25 and 2/24/25 with unchanged symptoms. He reported his neck pain was constant at 8/10. He continued to have low back pain and numbness in his right foot around the big toe area. He had ongoing right index finger pain and noted a raised area on his finger that hurt to touch. Dr. Cummings noted a 3 mm x 1 mm area of raised firm tender skin just past the DIP joint toward the radial aspect of Petitioner's finger. He could not rule out a foreign body. Dr. Cummings noted Petitioner had poor posture with his head leaning forward. He had tenderness to the midline lower cervical spine and trapezius, pain with range of motion, and negative Spurling's test bilaterally. Dr. Cummings continued to recommend a cervical spine MRI, CT scan of Petitioner's finger, and physical therapy. Petitioner's light duty restrictions were continued.

Three Employee Accident Reports were admitted into evidence, none of which were dated. Although Petitioner testified that he did not prepare or sign the accident reports admitted into evidence, his signature on the Employee Accident Report admitted into evidence as PX1 matches his signature on a Settlement Contract approved in Case No. 17-WC-023066 which was admitted into evidence as PX13. The report indicates dates of accident "05/23-24/2024". (PX1) Petitioner reported that on 5/23/24 he was picking up brush, branches, and debris and "my right index finger was stuck by a thorn or something of that nature. It then became infected, was swollen and hot to the touch and extremely painful". He reported that on 5/24/24, "I was on a zero turn mower and hit a hole, which jarred my hips, neck, and lower back. In which bruised and irritated more parts than thought at first". He stated that he was operating the mower with both hands and when he hit a hole on uneven ground the front end of the mower tilted upward into the air and jarred his hips, neck, and back. Petitioner did not indicate what time either accident occurred. He reported that he received treatment from Dr. Srinivasan, Dr. Abraham, NP Wright, PA Lyons, Dr. Newman, PA Sweitzer, and Dr. Cummings. The Arbitrator notes that Petitioner was initially examined by Dr. Cummings on 7/10/24 and he treated with the other listed physicians prior to that date. The report noted that Petitioner was hired by Respondent on 5/13/24 and his last day of work was on 6/7/24.

Respondent admitted two additional accident reports into evidence that were not signed or dated. (RX2) The reports indicate that Petitioner's injury on 5/23/24 occurred at 1:37 p.m., and his injury on 5/24/24 occurred at 9:36 a.m. It was noted that Petitioner was wearing gloves at the time of the 5/23/24 accident. The remainder of the reports are consistent with Petitioner's Accident Report (PX1).

On 7/15/24, a Supervisor's Report of Accident was prepared and signed by Greg Tally. (RX2) It was noted that Petitioner was picking up small limbs by hand and placing them in the

back of a truck on 5/23/24. His shift was scheduled to begin at 7:00 a.m. on 5/23/24 but he overslept and arrived late. Petitioner's Supervisor, Jeff Moffett, reported that Petitioner told him on 5/24/24 at 7:00 a.m. that his finger was bothering him from the day before and he was not sure what he had done. Mr. Moffett stated that Petitioner told him he was fine and did not want to fill out a report. Mr. Moffett was informed by the job Foreman that Petitioner was wearing gloves while picking up limbs.

On 7/16/24, a second Supervisor's Report of Accident was prepared and signed by Greg Tally. (RX2) The report indicated that Petitioner stated in a text message on 6/26/24 that he hurt his back on 5/24/24 when the mower hit a hole. No notice of injury was reported at that time and the accident was not investigated.

Petitioner admitted job search logs into evidence from 11/3/24 through 2/23/25. (PX12) Petitioner allegedly made 78 contacts with potential employers which was equally split between in-person and online applications.

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.

Petitioner testified that on 5/24/24 he was riding a lawn mower down a hill that was slick from rain and he hit a bump that caused the mower to tip backward and forward. He stated it felt like whiplash and his back was sore. On cross-examination, Petitioner testified that he was in shock after he hit the pothole, and he did not notice immediate symptoms. He stated that he had pain in his low back and hips when he told his supervisor Mr. Moffett about the accident before he left work that day. Mr. Moffett denied that Petitioner reported his 5/24/24 accident to him that day and stated he learned about Petitioner's accident by text message approximately one month after it allegedly occurred. Mr. Moffett did not notice any physical limitations in Petitioner after 5/24/24 and he believed Petitioner performed his regular job duties. Pursuant to Petitioner's medical records, he did not mention the lawn mower accident or complain of any symptoms in his low back, neck, or hips until 6/28/24. Further, Petitioner texted Mr. Moffett 14 times between 5/28/24 and 6/25/24, and at no time did he mention a work accident of 5/24/24 or that he was treating or taking off work for any injuries related to an alleged work accident.

Respondent's payroll records show Petitioner was scheduled off work for the weekend, 5/25/24 through 5/26/24, and Monday, 5/27/24, due to the holiday. On 5/28/24, Petitioner worked from 12:31 p.m. to 3:00 p.m. due to a sick child. Respondent's payroll records indicate Petitioner worked his full 8-hour shift from 5/29/24 through 5/31/24. He was not scheduled to

work the weekend, 6/1/24 through 6/2/24. He worked a full 8-hour shift on Monday, 6/3/24, and operated the lawn mower that day.

On 6/4/24, Petitioner texted Mr. Moffett that he would not be in because he was sick. Petitioner presented to urgent care on 6/4/24 for vomiting and diarrhea since yesterday. He had some fatigue but denied fever, abdominal pain, back pain, and cold symptoms. Petitioner was diagnosed with acute gastroenteritis. There was no mention of the 5/24/24 work accident or any hip, low back, or neck complaints at this visit. Petitioner specifically denied back pain. He was placed off work for 2 days and released to return to work on 6/6/24. Petitioner texted Mr. Moffett on 6/5/24 and 6/6/24 that he would not be in to work because he was sick and had the flu.

On 6/6/24, Petitioner returned to urgent care with complaints of feeling tired and weak for the past three days. He requested a work note for more time off. He was diagnosed with acute sinusitis with worsening symptoms. Petitioner received treatment for his work-related right index finger injury at that visit. There was no mention of the 5/24/24 work accident or any low back, neck, or hip complaints. Petitioner was provided an off work slip for 6/6/24 and released to return to work on 6/7/24.

Respondent's payroll records indicate Petitioner worked his full 8-hour shift on 6/7/24 and operated the lawn mower that day. He was scheduled off work for the weekend, 6/8/24 through 6/9/24. Petitioner worked a full 8-hour shift on 6/10/24 which was the last day he worked for Respondent.

On 6/11/24, Petitioner presented to Springfield Clinic and reported he had been seen in prompt care twice and he had continued fatigue and depression. Petitioner reported he just started a new job at a cemetery mowing grass which had increased his allergy symptoms. Petitioner had a history of asthma and used an albuterol inhaler. A musculoskeletal and neurologic exam was unremarkable. He was again diagnosed with chronic sinusitis and advised to wear a mask while mowing. There was no mention of the 5/24/24 work accident or any low back, neck, or hip complaints at this visit.

On 6/11/24, Petitioner texted Mr. Moffett that he was taking off work for a family emergency. Petitioner remained off work through 6/13/24. On 6/13/24, Petitioner returned to psychiatrist Dr. Medina and stated he felt irritable and tired. Petitioner reported he got a new job but got sick and missed six days of work. He stated he had been more anxious and was worried he would lose his job. Petitioner reported increased difficulty sleeping, worsening of appetite, increased sadness, and 1 to 2 anger outbursts. Petitioner requested a work slip excusing him for the last six days. Dr. Medina increased his prescription for Zoloft and recommended behavioral therapy. Dr. Medina provided Petitioner with off work slips for 6/11/24 through 6/14/24 and 6/17/24 through 6/20/24 due to anxiety. He released Petitioner to return to work on 6/21/24. Petitioner did not mention a work accident of 5/24/24 or complain of any back, neck, or hip symptoms at this visit.

On 6/14/24, Petitioner texted Mr. Moffett, "I will be back in on Monday I have a doctors note for all the days that I will give you on Monday. Sorry very bad week". Petitioner was scheduled off work for the weekend, 6/15/24 and 6/16/24. On 6/17/24, Petitioner texted Mr.

Moffett, “I will not be in today as I’m under the care of my doctor. I will be reevaluated today or tomorrow hopefully. I have a note from all last week. I can get that to you if I can just wait until I get this weeks note”. Mr. Moffett replied, “You have no paid time to use. This will be unpaid”.

On 6/18/24, Petitioner texted Mr. Moffett, “I was will be going back to meet with my doctor today I will let you know what he says as far as when I can return”. The Arbitrator finds this text inconsistent with Petitioner’s treatment and Dr. Medina’s work slip placing him off work through 6/20/24. Petitioner sent a second text to Mr. Moffett on 6/18/24 that stated, “I understand that I won’t be paid for what I have missed. But the note isn’t just for being sick or something is is for something else. What else besides a document from doctor if anything would help my situation. I have never had to be off work like this and I’m sorry if happened this way but being off has not been my decision”. Respondent’s payroll records indicate Petitioner texted he was not feeling well and would not be in.

On 6/20/24, Petitioner texted Mr. Moffett, “I have been cleared to come back tomorrow. I will have all my paper work from the doctors and will have all that for you”. On 6/21/24, Petitioner texted Mr. Moffett, “I will not be in today. Yesterday I was scheduled to see another doctor and to get on a different medication that medication went way wrong and he doesn’t want me operating anything until it’s out of my system I will have that note for you on Monday im really sorry about this I have never had something like this happen to me. I will be back on track next week and be ready to go”. Respondent’s payroll records indicate Petitioner texted he was having medication problems. The Arbitrator finds that Petitioner’s text is inconsistent with his treating records. There was no evidence that Petitioner returned to the doctor on 6/20/24, or that any physician advised him he could not operate “anything” due to medication.

On 6/21/24, Petitioner presented to Springfield Clinic for a one-day history of high anxiety and depression. He received treatment for his work-related right index finger injury. There was no mention of a work accident of 5/24/24 or any low back, neck, or hip complaints at this visit. Dr. Abraham provided Petitioner with an off work slip for 6/21/24.

On 6/24/24, Petitioner returned to Dr. Abraham and reported anxiety and depression for several days. Dr. Abraham noted Petitioner had chronic anxiety. Petitioner reported he was under a lot of undue stress due to his workplace questioning his absenteeism and a relationship currently. Petitioner requested behavioral therapy. Dr. Abraham diagnosed anxiety reaction and instructed him to follow up with Dr. Medina for a referral for cognitive behavioral therapy. Dr. Abraham discussed looking into FMLA to protect Petitioner’s employment status. He provided Petitioner with a work slip for the 6/24/24 visit. Petitioner texted Mr. Moffett on 6/24/24 and 6/25/24 advising he was still under the doctor’s care and was being reevaluated.

On 6/25/24, the Department Director Greg Tally signed a Notice of Probationary Discharge terminating Petitioner’s employment. Coincidentally, the next day on 6/26/24, Petitioner texted Mr. Moffett, “Sorry I’m just now calling in but I have been under meds from the doctor and the finger I told you that I got something in while picking up branches that day is really infected as well so I’m on meds for that”. Mr. Moffett replied, “What day was that?”. Petitioner responded, “May 24 at 6:45 as soon as I got there. You told me if it got worse later on that we could report it then because other wise everyone including me would loose their safety

bonus. I also told you I hit a big hole in the grave yard that is now bothering my right hip and lower back”. The Arbitrator notes that this text to Mr. Moffett was the first time Petitioner mentioned his work accident of 5/24/24, or any injuries resulting from the accident, in the 14 texts he sent Mr. Moffett from 5/28/24 through 6/26/24.

On 6/27/24, Petitioner was seen by a podiatrist for plantar warts to his right foot. The podiatrist performed a musculoskeletal and neurologic exam that was unremarkable, and Petitioner had no antalgic gait. There was no mention of a work accident on 5/24/24 or complaints of low back, neck, or hip symptoms at this visit. On 6/27/24, Petitioner texted Mr. Moffett, “I will not be in today as I’m still under doctors care”.

On 6/28/24, Petitioner texted Mr. Moffett, “I tried calling this morning to speak to you to tell you I wouldn’t be in But you never called back and I forgot to text you unlike I have everyday so im texting you to tell you in writing I apparently won’t be in today. I go back to the doctors today for my finger and my hip and back also today. I will update you as soon as I know something”.

Petitioner’s testimony that he mentioned his 5/24/24 accident to all of his treating physicians at every visit, and he mentioned he had pain in his back, hip, and neck, is contrary to the medical evidence. Petitioner’s office visit at Springfield Clinic on 6/28/24 was the first documented history of an alleged work accident on 5/24/24, at which time he provided a detailed history of his interactions with Respondent related to his work accidents. Petitioner reported he was pressured into not filling out a work incident report; he was extremely depressed and anxious because of this situation; and he felt crippled with anxiety and stayed up until 6:00 a.m. Petitioner reported that Mr. Moffett told him that he and the other employees would lose their safety bonus when he reported his finger injury the morning of 5/24/24. He felt like everyone at work treated him differently now and it caused him a lot of anxiety. He stated he did not want to go to work anymore and requested an off work note. The Arbitrator notes that Petitioner had not worked for 18 days prior to the visit on 6/28/24 wherein he reported being treated differently at work. From 5/24/24 through 6/28/24, Petitioner worked only 6.5 days and did not testify that other employees or Mr. Moffett treated him “differently” during that time.

Petitioner also reported to NP Wright on 6/28/24, for the first time, that he some pain to his right hip for the past three weeks. Petitioner reported he was mowing, and he thinks he jarred his hip. An x-ray of the right hip was negative. Physical examination revealed normal gait and all four extremities moved freely. Petitioner appeared anxious with quick speech. NP Wright recommended that Petitioner return to his psychiatrist for cognitive behavioral therapy. She provided Petitioner with an off work slip from 6/25/24 through 6/28/24 and released him to return to work on 7/1/24.

The Arbitrator notes that Petitioner provided his treating physician with a history of his 5/24/24 accident for the first time on 6/28/24, three days after the Notice of Probationary Discharge was signed. The Arbitrator acknowledges that the Notice of Probationary Discharge was not mailed to Petitioner until 7/9/24; however, there is a stark contrast in his documentation and notification to Respondent of his treatment and time off related to his work injuries immediately following the date of discharge.

The Arbitrator finds Petitioner's credibility to be significantly compromised. On and after 6/28/24, Petitioner continued to report his alleged work accident of 5/24/24 to his treating physicians. On 7/2/24, Petitioner presented to the orthopedic walk-in clinic for right hip pain. NP Lyons noted, "However, as I asked patient questions regarding his right hip pain, he states that it is also his left hip as well as his low back and he 'has never had pain before like this in his life'." It was further noted, "He was recently mowing Oak Lawn Cemetery on May 24 when he states he hit a hole causing a jarring injury to his low back and hip." NP Lyons noted that the physical examination seemed to be out of proportion to exam and she could not identify any radicular symptoms.

On 7/3/24, orthopedist Dr. Newman noted Petitioner was apparently mowing on 5/24/24 and ran over a hole in the ground causing a jarring injury to his entire body. Dr. Newman noted, "He now presents today for neck pain as mentioned above. He states that he simply woke up with the pain. There was no new injury that he can recall or identify." Dr. Newman stated that Petitioner was fine to return to work without restrictions.

On 7/7/24, Petitioner returned to Springfield Clinic Urgent Care and reported continued neck and upper back pain related to workplace injury that he rated 8/10. Petitioner reported he drove a lawn mower over a small hole that caused the seat to bounce and jar his back and hips. He reported that Respondent wanted him to return to work but he did not feel capable of completing his work duties due to pain.

Although Petitioner testified that he did not prepare or sign the accident reports admitted into evidence, his signature on the Employee Accident Report admitted into evidence as PX1 matches his signature on a Settlement Contract approved in Case No. 17-WC-023066 which was admitted into evidence as PX13. The report indicates that on 5/24/24, "I was on a zero turn mower and hit a hole, which jarred my hips, neck, and lower back. In which bruised and irritated more parts than thought at first". Petitioner reported that he was operating the mower with both hands and when he hit a hole on uneven ground the front end of the mower tilted upward into the air and jarred his hips, neck, and back. Petitioner did not indicate what time either accident occurred. He reported that he received treatment from Dr. Srinivasan, Dr. Abraham, NP Wright, PA Lyons, Dr. Newman, PA Sweitzer, and Dr. Cummings. The Arbitrator notes that Petitioner was initially examined by Dr. Cummings on 7/10/24 resulting in the accident report being prepared sometime after that date.

On 7/16/24, a Supervisor's Report of Accident was prepared and signed by Greg Tally. The report indicated that Petitioner stated in a text message on 6/26/24 that he hurt his back on 5/24/24 when the mower hit a hole. No notice of injury was reported at that time and the accident was not investigated. The Arbitrator finds Mr. Tally's report credible as he also prepared a Supervisor's Report of Accident on 7/15/24 related to Petitioner's right index finger injury of 5/23/24 and acknowledged that Petitioner provided notice of his finger injury and that the accident was investigated.

The Arbitrator also questions whether Petitioner actually operated the riding lawn mower on 5/24/24. Although he testified that he did not always fill out the mower log because he was a

new employee and he did not always know where the log was kept, the mower log only shows Petitioner operating a mower on Monday, 5/20/24, of that work week. (RX8) However, Petitioner did indicate he operated the mower on 6/3/24 and 6/7/24 the following week, which were the only two days he worked that week.

Based on the totality of the evidence, the Arbitrator finds that Petitioner failed to meet his burden of showing, by a preponderance of the evidence, that he sustained accidental injuries that arose out of and in the course of his employment with Respondent on 5/24/24.

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

Based on the above findings as to accident, this issue is moot.

Issue (G): What were Petitioner’s earnings?

Petitioner testified that he was hired by Respondent at an annual salary of, “I believe \$43,300 and some dollars and 76 cents”. He was scheduled to work 40 hours a week. Petitioner’s wage records show he earned gross wages of \$834.88 per 40 hours worked, representing \$20.872 per hour or \$43,413.76 per year. (RX1) The Arbitrator finds Petitioner’s testimony consistent with the wage records.

Therefore, the Arbitrator finds that Petitioner’s average weekly wage pursuant to Section 10 of the Act was \$834.88.

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

Issue (K): Is Petitioner entitled to any prospective medical care?

Based on the above findings as to accident, the Arbitrator finds that Respondent is not liable for payment of medical bills or prospective medical care, and Petitioner’s claim for said benefits is denied.

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

Based on the above findings as to accident, the Arbitrator finds that Respondent is not liable for payment of temporary total disability benefits and Petitioner’s claim for said benefits is denied.

Issue (O): Number of dependent children.

Petitioner alleged he had three dependent children under the age of 18 at the time of accident on his Application for Adjustment of Claim filed on 7/23/24. (AX3) Petitioner noted on his accident report that he had two dependent children. (PX1) Petitioner testified at trial that at the time of his work accident he had three dependent children ages 10, 11, and 18. His 18 year old child was still in school and turned 19 in June 2024. Therefore, the Arbitrator finds that Petitioner had three dependent children at the time of his accident on 5/23/24.

A handwritten signature in cursive script that reads "Linda J. Cantrell". The signature is written in dark ink and is positioned to the left of the date.

MARCH 26 2025

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC020042
Case Name	Nicholas Cody v. City of Springfield Public Works/Oak Ridge Cemetery
Consolidated Cases	24WC020040
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0479
Number of Pages of Decision	28
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Steven Berg
Respondent Attorney	Kenneth Bima

DATE FILED: 11/24/2025

/s/ Frank Soto, Commissioner

Signature

24 WC 20042

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 SANAGAMON

☒ 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NICHOLAS CODY,

Petitioner,

vs.

NO: 24 WC 20042

CITY OF SPRINGFIELD,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 26, 2025 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.

24 WC 20042

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

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

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

NOVEMBER 24, 2025

FJS/dw

O-11/5/25

46

/s/ *Frank J. Soto*

Frank J. Soto

/s/ *Carolyn M. Doherty*

Carolyn M. Doherty

/s/ *Raychel A. Wesley*

Raychel A. Wesley

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC020042
Case Name	Nicholas Cody v. City of Springfield Public Works/Oak Ridge Cemetery
Consolidated Cases	24WC020040
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	25
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Steven Berg
Respondent Attorney	Kenneth Bima

DATE FILED: 3/26/2025

/s/Linda Cantrell, Arbitrator
Signature

INTEREST RATE WEEK OF MARCH 25 2025 4.09%

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)

Nicholas Cody

Employee/Petitioner

v.

Case # **24** WC **020042**

City of Springfield Public Works/Oak Ridge Cemetery

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 **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Springfield**, on **2/28/25**. 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 **Number of Dependents**

FINDINGS

On the date of accident, **5/23/24**, 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 through 6/28/24, and not thereafter.

In the year preceding the injury, Petitioner earned **\$43,413.76**; the average weekly wage was **\$834.88**.

On the date of accident, Petitioner was **40** years of age, *single* with **3** dependent children.

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

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

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's current condition of ill-being of the right index finger is causally connected to the 5/23/24 work accident through 6/28/24, and not thereafter, Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 4 for treatment directly related to Petitioner's right index finger, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. The Arbitrator specifically awards medical expenses for treatment received at Springfield Clinic for dates of service 5/23/24 (\$578.00), 6/6/24 (\$578.00), 6/21/24 (\$578.00 and \$171.00), and 6/28/24 (\$803.00). The Arbitrator denies medical expenses related to treatment received at Springfield Clinic on 6/4/24, 6/11/24, 6/24/24, 6/27/24, and 7/1/24 through 7/15/24 as said treatment is not causally connected to Petitioner's work accident of 5/23/24. The Arbitrator further denies all medical expenses for treatment received by Dr. Alexander Cummings contained in Petitioner's Group Exhibit 5 as said treatment was after 6/28/24.

The Arbitrator finds that Petitioner is not entitled to prospective medical care or temporary total disability benefits and said benefits are denied herein.

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.



MARCH 26 2025

Arbitrator Linda J. Cantrell

ICArbDec19(b)

STATE OF ILLINOIS)
) SS
 COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

NICHOLAS CODY,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 24-WC-020042
	)	
CITY OF SPRINGFIELD PUBLIC	)	Consolidated Case No.: 24-WC-020040
WORKS/OAK RIDGE CEMETERY,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Springfield on February 28, 2025, pursuant to Section 19(b) of the Act. On 7/23/24, Petitioner filed an Application for Adjustment of Claim alleging injuries to his right index finger as a result of picking up limbs and brush on 5/23/24. (Case No. 22-WC-020042, AX3). On 7/23/24, Petitioner filed an Application for Adjustment of Claim alleging injuries to his back, neck, and other related areas as a result of hitting a pothole while on a lawn mower on 5/24/24. (Case No. 24-WC-020040, AX4).

The issues in dispute in Case No. 24-WC-020042 are accident, causal connection, average weekly wage, number of dependents, medical expenses, temporary total disability benefits, and prospective medical treatment. The Arbitrator has simultaneously issued a separate Decision in Case No. 22-WC-020040.

TESTIMONY

Petitioner was 40 years old, single, with three alleged dependent children at the time of accident. Petitioner testified that he was hired by Respondent on 5/7/24 and performed maintenance at the Oak Ridge Cemetery. He testified that on 5/23/24, around 1:30 to 2:00 p.m., he was picking up limbs and something pricked his right index finger. He was wearing mesh gloves. Petitioner was scheduled to work 7:00 a.m. to 3:00 p.m. He completed his work shift on 5/23/24 and about an hour later his finger became swollen. Petitioner denied any symptoms in his right index finger prior to the alleged accident.

Petitioner testified that he reported the accident to his supervisor Jeff Moffett the next morning and showed him the swelling in his finger. Petitioner testified that Jeff told him everyone would lose their safety bonus if he pursued his work injury. Petitioner stated he

continued working and did not complete an accident report that day. Petitioner testified that Jeff's comment made him very anxious, and he felt cut off from everybody that overheard his comments because they were not happy with him. Petitioner admitted that prior to working for Respondent he was treating with a psychiatrist and had issues with anxiety. He stated that his anxiety was fully under control when he was hired by Respondent, but his anxiety was horrible after Jeff's comments the day after his accident.

Petitioner went to Springfield Clinic Urgent Care on the day of the accident and was prescribed Bactrim. He testified that he had an anaphylactic reaction to Bactrim while working on 5/25/24 and Mr. Moffett told him to go to the store and buy Benadryl.

Petitioner testified that on 5/24/24 he was riding a lawn mower down a hill that was slick from rain and he hit a bump that caused the mower to tip backward and forward. He testified that he was still training to ride the mower. He stated it felt like whiplash and his back was sore. Petitioner testified that he had neck symptoms prior to working for Respondent that resolved with chiropractic care. He also had an issue with his back that resolved prior to being hired by Respondent. Petitioner testified that he told Mr. Moffett about the mower incident as he was leaving work that day, but an accident report was not completed that day.

Petitioner returned to Springfield Clinic on 6/4/24 and was diagnosed with gastroenteritis. He testified that he had not been prescribed Bactrim prior to 5/23/24 and he is allergic to the penicillin family. Petitioner stated that on 6/6/24 Dr. Srinivasan "sliced his finger open". Petitioner testified that he was off work for a few days in early June 2024 due to the medication he was taking for his finger injury. He treated with Dr. Abraham in June 2024 for his finger and stated his anxiety was extreme at that time. Petitioner testified that since his conversation with his supervisor on 5/24/24 he had to resume taking anxiety medication that prevented him from operating a lawn mower.

Petitioner treated with NP Wright at Springfield Clinic on 6/28/24 for his low back and underwent x-rays of his hips and finger. Petitioner stated that a few days after his 5/24/24 accident his right hip became sore. He thought it was bruised from being jarred but his symptoms worsened. He denied any new injuries to his right hip since 5/24/24. Petitioner treated with Dr. Newman at the Orthopedic Department of Springfield Clinic in July 2024 for worsening pain in his neck, low back, and hips. When asked when he first noticed neck pain in relation to the 5/24/24 accident, Petitioner stated, "I mean it was sore all together, but was nothing like after the back pain onset it just like went up, up towards my neck and down towards the hip; going up and down". Petitioner testified that he did not sustain any new injuries to his neck after 5/24/24.

Petitioner testified that Dr. Newman prescribed Prednisone that caused extreme anxiety and he could not sleep. He treated with his primary care physician Dr. McAfee and reported his lawn mower incident to her. He stated that Respondent did not approve a CT scan that was recommended. Petitioner testified that his right index finger is sensitive to touch. He has not sustained any new injuries to his right index finger since 5/23/24.

Petitioner began treating with Dr. Cummings on 7/10/24 for his finger, neck, hips, and back. He described both accidents to Dr. Cummings. Petitioner currently has him on light duty restrictions.

Petitioner testified that he received a letter dated 7/9/24 terminating his employment with Respondent. He was a probationary employee and understood that he could be terminated for any reason during the one-year probationary period prior to becoming a union member.

When asked what his annual salary was when hired by Respondent, Petitioner stated, "I believe \$43,300 and some dollars and 76 cents". He was scheduled to work 40 hours a week. Petitioner testified that at the time of his work accidents he had three dependent children ages 10, 11, and 18. He stated that his 18-year old child was still in school.

Petitioner testified that prior to his work accidents he received psychiatric treatment from Dr. Juan Medina. He saw Dr. Medina on 4/29/24 at which time he had no signs of anxiety. He treated with Dr. Medina on 6/13/24, 8/28/24, and 1/20/25 at which time his anxiety was out of control, and he was not able to function.

Petitioner testified that an MRI of his thoracic spine and physical therapy was ordered but not approved by Respondent or Public Aid. He has constant pain in his neck that negatively affects his posture and radiates into his arms. Petitioner has back pain that worsens with climbing stairs. His pain radiates into both legs, worse on the right and into his right foot. He denied having these symptoms prior to the work accident. Petitioner testified that he has unsuccessfully searched for employment within the restrictions placed by Dr. Cummings.

Petitioner testified that he did not prepare or sign the accident reports admitted into evidence. He agreed that the descriptions of his accidents were accurate. Petitioner testified that he injured his right middle finger on 3/14/08 while employed by UPS. He also sustained a meniscus tear in his left knee on 7/31/17 while employed by Dan DeWeese Painting. He denied having any issues with his neck, back, or extremities when hired by Respondent. Petitioner testified that when he was hired by Respondent, he was able to dig, rake debris, pick up limbs, ride a lawn mower, set stones, and pour concrete. He is scheduled to follow up with Dr. Cummings on 3/23/25.

On cross-examination, Petitioner testified that prior to working for Respondent he performed painting jobs for a subcontractor. He was paid cash and worked weekly off and on over 15 years. He also worked for various autobody shops and performed autobody painting during the winter months.

Petitioner agreed that on 3/1/23 he underwent a neurology exam at Springfield Clinic and an EEG and MRI of his brain was ordered. He denied undergoing the examinations and stated the studies are now recommended for his neck and head. He agreed that on 3/1/23 he inquired

about disability for PTSD and that his anxiety was not under control at that time. He denied ever having issues holding a job due to anger. Petitioner denied that the health issues he had prior to working for Respondent had anything to do with his low back or neck. Petitioner agreed he treated with orthopedist Dr. Wolters on 3/14/23 following a fall at Buffalo Wild Wings in June 2022 and he underwent an MRI.

Petitioner testified that he may have had back pain when he treated at Springfield Clinic Prompt Care on 3/15/23 following a motor vehicle accident. Petitioner stated he underwent chiropractic care and his back and neck pain resolved. Petitioner agreed that he returned to Prompt Care on 5/19/23 with increased depressive symptoms. He testified that he was going through a breakup with his kids' mother of 20 years. Petitioner testified that he had increased depression and anxiety throughout 2023 that occasionally prevented him from working. He did not recall having a pinched nerve in his neck in February 2024.

The Arbitrator observed Petitioner's right index finger and noted an incision and scar tissue, without swelling or redness. Petitioner testified that his finger swells when he uses it, and he believes there is something inside his finger. He testified that when he poked his finger on 5/23/24 he did not think anything of it until it started to swell. When asked if he had overslept and was late for work on 5/23/24, Petitioner stated, "I don't, but I could have". He agreed that he started working at 8:41 a.m. on 5/23/24 and his accident occurred around 1:30 p.m. He completed his shift, went home to shower, and went to the emergency room at 7:00 p.m. with finger pain and swelling for the past hour. He reported his accident the next morning and continued to work that day. Petitioner was off work the next three days for the weekend and a holiday the following Monday. Petitioner returned to work on Tuesday, 5/28/24, and worked the rest of the week.

Petitioner agreed that he returned to Springfield Clinic on 6/6/24 and a callus was removed on his finger to determine if a foreign body was present. Petitioner denied telling his treating physician that he was using a shovel at the time he injured his right index finger.

Petitioner testified that he was in shock after his lawn mower hit a pothole on 5/24/24 and he did not notice immediate symptoms. He stated he told Mr. Moffett about the accident that afternoon in case something was wrong with the mower or him. Petitioner testified that when he spoke to Mr. Moffett he had pain in his lower back and hips from the jarring motion. He initially sought treatment for the 5/24/24 accident on 6/4/24 because his symptoms worsened. Petitioner believed he told his treating physician on 6/4/24 about the lawn mower incident and stated he mentioned the accident every time he treated. He testified that he reported low back pain on 6/4/24. He testified that his neck pain did not "come on as bad until the back started just to take over", but he did have neck pain on 6/4/24.

Petitioner testified that when he returned to urgent care on 6/6/24 he was fatigued from having a reaction to the medication for his finger. He testified that at every visit he told his treating physicians about his 5/24/24 accident, and that he had pain in his back, hip, and neck. He

agreed he saw a podiatrist on 6/27/24 for plantar warts. Petitioner denied telling chiropractor James Newman on 7/3/24 that he woke with neck pain and had no new injury. He did not recall that Chiropractor Newman released him to full duty work on that date.

Petitioner testified that he treated with Dr. Cummings prior to his work accident for a knee injury. He underwent knee surgery for a torn meniscus by another physician because Dr. Cummings was not a surgeon. Petitioner testified that he went to Dr. Cummings for his knee because “everybody else was trying to send me back to work”, and Dr. Cummings took the time to listen and diagnose a tear. Petitioner stated that is why he returned to Dr. Cummings after his work accidents with Respondent, so someone would help him.

Petitioner testified that he did not have any job interviews while searching for employment and he did not receive any replies. He did not have copies of his online applications. Petitioner testified that he goes to a restaurant bar with friends and went to California in July 2024 for his ex-girlfriend’s aunt’s funeral.

On re-direct examination, Petitioner testified that when he treats at Springfield Clinic he sees whichever doctor is available at the time. He stated that his treatment in early June 2024 was due to the side effects he had from the medication, so he did not specifically request an examination of his neck or back during those visits.

Jeff Moffett testified on behalf of Respondent. Mr. Moffett has worked at Oak Ridge Cemetery for 21 years and is currently the Superintendent of Public Works. Mr. Moffett explained that Oak Ridge Cemetery is active as it is the tourist site where President Abraham Lincoln is buried. The cemetery consists of 200 acres, 40,000 monuments, and nine miles of road. Respondent had six full-time grounds employees, 5 to 6 part-time grounds workers, and three office staff in May 2024. Mr. Moffett testified that he monitored and worked with the employees in the cemetery and he was Petitioner’s direct supervisor.

Mr. Moffett testified that new hires are put on a 7-month probationary period. He admitted that on 5/24/24, at 7:00 a.m., Petitioner told him he got something in his finger, and it was bothering him a little. Mr. Moffett stated he asked the Director of the cemetery if Petitioner had to fill out an accident report and he told him only if his finger continued to bother him or worsened. Mr. Moffett looked at Petitioner’s finger and did not “really see anything”. He stated that Petitioner worked his regular job duties from 5/24/24 through 6/10/24.

Mr. Moffett testified that he learned about Petitioner’s accident of 5/24/24 by text message approximately one month after it allegedly occurred. He did not notice any physical limitations in Petitioner after 5/24/24. Mr. Moffett testified that Petitioner performed his regular job duties after 5/24/24, which would have involved lifting 70-pound sheets of plywood, raking, and shoveling.

Mr. Moffett testified that Respondent keeps written daily logs on the lawn mowers for maintenance and usage purposes. The logs showed Petitioner mowed on 5/20/24, 6/3/24, and 6/7/24. Mr. Moffett stated he did not work Saturdays and would not have worked on 5/25/24 when Petitioner allegedly reported the lawn mower accident to him.

On cross-examination, Mr. Moffett denied that he told Petitioner the employees would lose their safety bonus when he reported his finger injury. He agreed that Petitioner reported his finger injury to him the morning after it occurred. He testified that there were four employees working grounds on 5/24/24, and three office workers where the Director has an office. The office hours are 8:00 a.m. to 4:30 p.m. and is always open. Mr. Moffett testified that the grounds employees work in pairs unless they are mowing. He testified that Respondent hires seasonal employees in late March or early April to prepare for Memorial Day. He interacts with the seasonal employees on the grounds more often than the full-times employees.

Mr. Moffett stated he did not know if Petitioner actually lifted plywood or used a shovel after 5/24/24. He testified that the handwriting on the timesheet (RX7) was his. Mr. Moffett testified that he communicated with Petitioner via text when he took off work sick from 6/4/24 through 6/6/24. He did not know why Petitioner was sick. He testified that mower logs are filled out once per week by the operator and Petitioner may have had more logs besides the once admitted into evidence. He stated that the operator may forget to fill out the mower log and it was possible Petitioner was operating the mower on 5/24/24.

Mr. Moffett testified that employees are provided with yellow cloth gloves and a pair of tan leather gloves. He encourages employees to use leather gloves when picking up brush. He testified that Petitioner was given a pair of leather gloves and he saw Petitioner wearing them multiple times on 5/23/24. He did not know which gloves, if any, Petitioner was wearing when he injured his finger on 5/23/24.

Petitioner was recalled to testify. He reiterated that he told Mr. Moffett on 5/24/24 about the lawn mower incident. Petitioner testified that he did not lift plywood or perform any heavy labor after 5/24/24. He stated he did not fill out a mower log every time he used the mower because he was a new employee and sometimes he did not know where the log was.

DOCUMENTARY EVIDENCE

On 3/1/23, Petitioner was seen at Springfield Clinic for depression. (RX5) It was noted he was having difficulty working due to anger. Petitioner stated he was treating with a psychiatrist and did not feel he was being listened to. He was looking for a new psychiatrist and was taking Alprazolam. It was noted that Petitioner had been worked up by neurology with an EEG and an MRI of the brain. Petitioner was wondering if he could get on disability for PTSD. He wondered if he had Ehlers-Danlos syndrome which his sister had. Petitioner reported he had difficulty healing from his shoulder and knee injury.

On 3/14/23, Petitioner presented to Springfield Clinic for follow up of his right shoulder and left knee. (RX5) It was noted Petitioner fell in June 2022 at Buffalo Wild Wings and has had pain since. He underwent six physical therapy sessions and two anti-inflammatories without relief. Petitioner underwent a subacromial injection in his right shoulder one month ago that gave him 1 to 2 weeks of relief. Petitioner stated that his shoulder pain has not recurred, but he continued to have knee pain with no relief from an injection. Physical exam revealed mild pain with Neer and Hawkins impingement testing and Speed testing of the right shoulder. X-rays and an MRI arthrogram of the right shoulder showed mild subacromial bursitis. He was referred for continued physical therapy.

On 3/15/23, Petitioner presented to Springfield Clinic for back pain following a motor vehicle accident one week ago. (RX5) He stated that a car pulled out in front of him, and he clipped their back bumper. He was a restrained driver, the airbags did not deploy, and he did not strike his head. Petitioner reported he had generalized back pain since the accident and missed a few days of work as an auto mechanic. Tylenol and Motrin provided some relief. Petitioner was prescribed Cyclobenzaprine.

On 5/19/23, Petitioner presented to Springfield Clinic with increased depression, fatigue, and sleeplessness for 48 hours. (RX5) It was noted Petitioner recently had a sore throat and mononucleosis was a concern. He was previously treated with two antibiotics. Petitioner reported increased stressors due to loss of a friend and starting a new job. Petitioner was currently taking 15 medications.

On 2/13/24, Petitioner was seen at Springfield Clinic for pain in the back of his head on the right that radiated up and over his head when he turned his neck, and a persistent sore throat. The medical record indicates 82 active problems including issues with his low, thoracic, and cervical spine, and sacral region. (RX5)

On 4/29/24, Petitioner presented to psychiatrist Dr. Juan Medina who noted Petitioner was compliant with his medications. (PX11) Dr. Medina was treating Petitioner for recurrent and moderate major depressive disorder, generalized anxiety disorder, and panic disorder. Petitioner denied any problems with anger and stated he had no change in his feelings of anxiety. He continued to feel sad, and his sleep and appetite had improved. He was instructed to continue taking Zoloft (depression), Trazodone (insomnia), Xanax (anxiety), and Vistaril (insomnia).

On 5/23/24 at 7:04 p.m., Petitioner presented to Springfield Clinic Urgent Care for right index finger pain and swelling for the past hour. (PX6, p. 1-3). Petitioner reported he was working outside clearing a lot of brush today and he noticed swelling, redness, and pain after showering tonight. He was wearing gloves and was unsure if he poked himself with a stick or some type of foliage. NP Alissa Howard noted right hand mild swelling and erythema to the volar index finger. Petitioner's finger was tender to touch with no abrasions or wounds. He was diagnosed with cellulitis of the finger and prescribed Bactrim. Petitioner reported a history of an allergy to penicillin.

Respondent's payroll records indicate Petitioner worked from 6:44 a.m. to 3:00 p.m. on Friday, 5/24/24. (RX7) Petitioner was scheduled off work on Saturday and Sunday, and he was off work on Monday, 5/27/24 due to the holiday.

On 5/28/24 at 6:17 a.m., Petitioner texted Mr. Moffett, "Hey Jeff it's Nick cody if you could give me a call back when you are able thank you". Respondent's payroll records indicate Petitioner called in with a sick child and was denied 5.5 hours of work. He worked from 12:31 p.m. to 3:00 p.m. (RX7)

Respondent's payroll records indicate Petitioner worked his full 8-hour shift on 5/29/24 through 5/31/24. (RX7) Petitioner was not scheduled to work the weekend, 6/1/24 through 6/2/24. He worked a full 8-hour shift on Monday, 6/3/24, and operated the lawn mower that day. (RX8).

On 6/4/24 at 6:27 a.m., Petitioner texted, "Hey Jeff it's Nick cody I left a message but I just wanted to make sure you got it. I won't be in today I'm sick". (RX4) Mr. Moffett replied, "Got it". Respondent's payroll records indicate Petitioner called in sick on 6/4/24 and he was denied 8 hours of work for the day. (RX7)

On 6/4/24, Petitioner returned to urgent care for vomiting and diarrhea since yesterday. (PX6, p. 4) He had some fatigue but denied fever, abdominal pain, back pain, and cold symptoms. He had no difficulty sleeping. Petitioner was diagnosed with acute gastroenteritis and prescribed Zofran. There was no mention of hip, low back, or neck complaints at this visit. Petitioner was placed off work for 2 days and released to return to work on 6/6/24. (PX10, p. 1)

Respondent's payroll records indicate Petitioner texted on 6/5/24 for being "sick" and he was denied for 8 hours of work. (RX7)

On 6/6/24 at 6:55 a.m., Petitioner texted Mr. Moffett, "Hey Jeff it's Nick cody I tried calling it's going to the vm I have the flu hopefully this is the last day of it and I will be back tomorrow. I will bring my doctor notes when I come I'm sorry for being out the last few days. Please just let me know you got this". (RX4) Mr. Moffett replied, "Yes". Respondent's payroll records indicate Petitioner texted he was sick and he was denied 8 hours of work for the day. (RX7)

On 6/6/24, Petitioner returned to urgent care with complaints of feeling tired and weak for the past three days. (PX6, p. 10) He requested a work note for more time off. He was diagnosed with acute sinusitis with worsening symptoms. Petitioner also complained of continued right index finger pain and was concerned there was a foreign body. A history of his treatment on 5/23/24 was noted and that he initially improved with Bactrim, but he recently noticed increased swelling and redness. Dr. Srinivasan injected Petitioner's finger with lidocaine and removed a callus formation on the palmar surface near the distal phalanx area. Inspection revealed no evidence of a foreign body. Additional antibiotics were prescribed. There was no mention of any hip, low back, or neck complaints at this visit. Petitioner's medication list showed his prescriptions for anxiety/depression were refilled on 8/16/23 (sertraline), 3/23/24

(hydroxyzine), 4/29/24 (trazodone), and 5/29/24 (Alprazolam). Petitioner was provided an off work slip for 6/6/24 and released to return to work on 6/7/24. (PX10, p. 2)

Respondent's payroll records indicate Petitioner worked his full 8-hour shift on 6/7/24 and operated the lawn mower that day. (RX7) Petitioner was scheduled off work on Saturday and Sunday, 6/8/24 through 6/9/24. Petitioner worked a full 8-hour shift on 6/10/24 which was the last day he worked for Respondent.

On 6/11/24, Petitioner was seen by NP Lisa Carney in the internal medicine clinic of Springfield Clinic. (PX6, p. 13) Petitioner reported he had been to prompt care twice and he had continued fatigue and depression. He reported an allergic rash from Bactrim after about a week of use. NP Carney noted Petitioner returned to the clinic last Thursday and was prescribed Clindamycin that caused stomach issues and nausea. Petitioner reported he just started a new job at a cemetery mowing grass which had increased his allergy symptoms. Petitioner had a history of asthma and used an albuterol inhaler. He was again diagnosed with chronic sinusitis and advised to wear a mask while mowing. There was no mention of any hip, low back, or neck complaints at this visit.

On 6/11/24 at 11:28 p.m., Petitioner texted Mr. Moffett, "Hey Jeff sorry I tried to call it was going to vm but it's Nick cody I'm sorry but I will not be in today family emergency. I will have a note for you tomorrow for it". (RX4) Respondent's payroll records indicate Petitioner was running late and never came in; however, Mr. Moffett noted that Petitioner later called and texted that his girlfriend's dad was in the hospital, and he was denied 8 hours of work for the day. (RX7)

On 6/12/24 at 1:51 p.m., Petitioner texted Mr. Moffett, "Hey Jeff I'm sorry I'm just now getting with you at this time of day our family is going thru some heartache and I need to be with them rn hopefully return tomorrow". (RX4) Respondent's payroll records indicate Petitioner texted he would not be in for a family emergency. He was denied 8 hours of work for the day. (RX7)

On 6/13/24 at 6:21 a.m., Petitioner texted Mr. Moffett, "I will not be in today I will have a note or fmla for you when I get back I'm sorry". (RX4) Respondent's payroll records indicate Petitioner texted he would not be in for a family emergency. He was denied 8 hours of work for the day. (RX7)

On 6/13/24, Petitioner returned to psychiatrist Dr. Medina and stated he felt irritable and tired. (PX11, p. 3) Petitioner reported he got a new job but got sick and missed six days of work. He has been more anxious and was worried he would lose his job. Petitioner reported increased difficulty sleeping and a worsening of appetite. Petitioner reported 1 to 2 anger outbursts with increased sadness. Petitioner requested a work slip excusing him for the last six days. Dr. Medina increased his prescription for Zoloft and recommended therapy. Dr. Madina provided Petitioner with off work slips for 6/11/24 through 6/14/24 and 6/17/24 through 6/20/24 due to anxiety. (PX10, p. 3-4) He released Petitioner to return to work on 6/21/24.

On 6/14/24 at 6:32 a.m., Petitioner texted Mr. Moffett, “I will be back in on Monday I have a doctors note for all the days that I will give you on Monday. Sorry very bad week”. (RX4) Respondent’s payroll records indicate Petitioner texted he would not be in for a family emergency. He was denied 8 hours of work for the day. (RX7)

On 6/17/24 at 6:01 a.m., Petitioner texted Mr. Moffett, “I will not be in today as I’m under the care of my doctor. I will be reevaluated today or tomorrow hopefully. I have a note from all last week. I can get that to you if I can just wait until I get this weeks note”. (RX4) Mr. Moffett replied, “You have no paid time to use. This will be unpaid”. Respondent’s payroll records indicate Petitioner texted he was not feeling well, and he was denied 8 hours of work for the day. (RX7)

On 6/18/24 at 6:18 a.m., Petitioner texted Mr. Moffett, “I was will be going back to meet with my doctor today I will let you know what he says as far as when I can return”. (RX4) On 6/18/24 at 10:01 a.m., Petitioner texted Mr. Moffett, “I understand that I won’t be paid for what I have missed. But the note isn’t just for being sick or something is is for something else. What else besides a document from doctor if anything would help my situation. I have never had to be off work like this and I’m sorry if happened this way but being off has not been my decision”. (RX4) Respondent’s payroll records indicate Petitioner texted he was not feeling well, and he was denied 8 hours of work for the day. (RX7)

On 6/20/24 at 6:42 a.m., Petitioner texted Mr. Moffett, “I have been cleared to come back tomorrow. I will have all my paper work from the doctors and will have all that for you”. (RX4) Respondent’s payroll records indicate Petitioner texted he would not be in and he was cleared for work tomorrow. He was denied 8 hours of work for the day. (RX7)

On 6/21/24 at 6:15 a.m., Petitioner texted Mr. Moffett, “I will not be in today. Yesterday I was scheduled to see another doctor and to get on a different medication that medication went way wrong and he doesn’t want me operating anything until it’s out of my system I will have that note for you on Monday im really sorry about this I have never had something like this happen to me. I will be back on track next week and be ready to go”. (RX4) Respondent’s payroll records indicate Petitioner texted he was having medication problems. He was denied 8 hours of work for the day. (RX7)

On 6/21/24, Petitioner presented to Springfield Clinic, Sherman Urgent Care for a one-day history of high anxiety and depression. (PX6, p. 16-17) He continued to have right index finger pain that was sharp with movement and dull at rest. Dr. Abraham performed a physical examination and noted mild redness without significant swelling in his finger. He had normal range of motion, strength, and sensation. An x-ray of Petitioner’s finger was unremarkable. He was instructed to alternate ibuprofen and Tylenol and to continue observation of his finger. There was no mention of any hip, low back, or neck complaints at this visit. Dr. Abraham provided Petitioner with an off work slip for 6/21/24. (PX10, p. 5)

On 6/24/24, Petitioner returned to Dr. Abraham and reported anxiety and depression for several days. (PX6, p. 19-20) Dr. Abraham noted Petitioner had chronic anxiety and was a patient of Dr. Medina whom he saw last week. Petitioner reported he was under a lot of undue

stress due to his workplace questioning his absenteeism and a relationship currently. Petitioner requested behavioral therapy. Dr. Abraham diagnosed anxiety reaction and instructed him to follow up with Dr. Medina for a referral for cognitive behavioral therapy. Dr. Abraham discussed looking into FMLA to protect Petitioner's employment status. He was provided a work slip for the 6/24/24 visit. There was no mention of any hip, low back, or neck complaints at this visit.

On 6/24/24 at 8:42 a.m., Petitioner texted Mr. Moffett, "Hey there it's Nick cody I will not be in today as I'm still under the doctors care and they will have notes for you today from Friday and today and I will be reevaluated today". (RX4) Respondent's payroll records indicate Petitioner texted he was not coming in and would bring a note. He was denied 8 hours of work for the day. (RX7)

On 6/25/24 at 6:33 a.m., Petitioner texted Mr. Moffett, "I will not be there today HR has all my notes for you". (RX4)

On 6/26/24 at 2:15 p.m., Petitioner texted Mr. Moffett, "Sorry I'm just now calling in but I have been under meds from the doctor and the finger I told you that I got something in while picking up branches that day is really infected as well so I'm on meds for that". (RX4) Mr. Moffett replied, "What day was that?". Petitioner responded, "May 24 at 6:45 as soon as I got there. You told me if it got worse later on that we could report it then because other wise everyone including me would loose their safety bonus. I also told you I hit a big hole in the grave yard that is now bothering my right hip and lower back".

On 6/27/24, Petitioner was seen by a podiatrist for plantar warts to his right foot. The podiatrist completed a muscular and neurologic exam and noted Petitioner had no antalgic gait. There was no mention of any hip, low back, or neck complaints at this visit.

On 6/27/24 at 8:54 a.m., Petitioner texted Mr. Moffett, "I will not be in today as I'm still under doctors care". (RX4)

On 6/28/24 at 1:20 p.m., Petitioner texted Mr. Moffett, "I tried calling this morning to speak to you to tell you I wouldn't be in But you never called back and I forgot to text you unlike I have everyday so im texting you to tell you in writing I apparently won't be in today. I go back to the doctors today for my finger and my hip and back also today. I will update you as soon as I know something". (RX4)

On 6/28/24, Petitioner presented to the internal medicine clinic. (PX6, p. 22) The history stated, "PT had an injury to finger, PT was given antibiotics, then had allergic reaction about 5 days later. PT was pressured into not filling out work incident report. PT has been extremely depressed and anxious because of this situation. PT is still having problems with his finger. PT says he feels crippled with anxiety, stays up until 6:00 a.m. because of anxiety. Needs work note." NP Wright noted Petitioner worked at a cemetery and about a month ago he was at work using a shovel when he felt like something go into his finger. Petitioner reported that when he told his boss about his finger, his boss told him that he and the other employees would lose their safety bonus. He feels like everyone at work treats him differently now and it causes him a lot of

anxiety and he does not want to go to work anymore. Petitioner reported he had numbness in his finger and when he wakes it is swollen and red. Dr. Medina prescribed Xanax and Sertraline for his anxiety/depression and Petitioner has seen him twice this month. NP Wright ordered a CT scan of Petitioner's right hand and provided an off work slip for 6/25/24 through 6/30/24. (PX10, p. 7)

Petitioner also complained of some pain to his right hip for the past three weeks, with no radiation into his leg. Petitioner reported he was mowing, and he thinks he jarred his hip. An x-ray of the right hip was ordered. Physical examination revealed normal gait, moves all four extremities freely, no obvious deformity of the right finger with a callus-like appearance on the palmar aspect of the right index finger at the DIP joint. Petitioner appeared anxious with quick speech. NP Wright recommended that Petitioner return to his psychiatrist for cognitive behavioral therapy. She provided Petitioner with an off work slip from 6/25/24 through 6/28/24 and released him to return to work on 7/1/24. (PX10, p. 7)

On 7/1/24, NP Wright made a record entry that Petitioner was notified that the right hip x-ray was negative. (PX6, p. 25) He was instructed to apply ice/heat and take ibuprofen. Petitioner reported he was still having a lot of hip pain and was going to the orthopedic urgent care. Petitioner was advised that radiology would be calling him to schedule the CT scan of his finger.

On 7/2/24, Petitioner was seen at the orthopedic walk-in clinic by NP Lisa Lyons for right hip pain. (PX6, 28-29) The records state, "However, as I asked patient questions regarding his right hip pain, he states that it is also his left hip as well as his low back and he 'has never had pain before like this in his life'." It was further noted, "He was recently mowing Oak Lawn Cemetery on May 24 when he states he hit a hole causing a jarring injury to his low back and hip." Petitioner localized his pain to the trochanteric region, low back, and the entirety of his lower extremities, with weakness and pain while standing. Physical examination revealed diffuse tenderness across all areas of the lower spinal column, piriformis, and trochanteric regions bilaterally, painful range of motion of the low back and hips, positive flip sign bilaterally, and painful SI joint loading which NP Lyons found out of proportion to the exam. NP Lyons reviewed the right hip x-ray and found it unremarkable. She ordered lumbar spine x-rays and interpreted a possible limbus deformity of the anterior/inferior L3 region versus overlying bowel gas pattern, and very mild L5-S1 disc space narrowing with mild facet arthropathy changes. NP Lyons diagnosed low back and bilateral hip pain secondary to a reported work-related injury on 5/24/24. She again reiterated that physical examination seemed to be out of proportion to exam and she could not identify any radicular symptoms. She referred Petitioner to physical therapy for low back and trochanteric pain, prescribed Diclofenac Sodium, and ordered him to follow up in six weeks. She provided Petitioner with an off work slip for 7/2/24. (PX10, 8)

On 7/3/24, Petitioner was seen by Dr. James Newman for an orthopedic consult for neck and upper back pain. (PX6, p. 32) He noted that Petitioner was apparently mowing on 5/24/24 and ran over a hole in the ground causing a jarring injury to his entire body. Dr. Newman noted, "He now presents today for neck pain as mentioned above. He states that he simply woke up with the pain. There was no new injury that he can recall or identify." Petitioner localized pain to his right parascapular region with intermittent radiation down his arm into his hand. His pain was

sharp and increased with active range of motion of the cervical spine, which he rated 9/10. He denied any lower extremity weakness. Physical examination revealed tenderness to palpation of the cervical paraspinal musculature and levator scapulae and limited range of motion. X-rays of Petitioner's cervical spine showed mild degenerative disc disease at C5-6 and cervical lordosis suggesting muscle spasms. Dr. Newman felt that Petitioner's neck and intermittent right upper extremity pain was secondary to a cervical disc herniation. His neurological exam was unremarkable with some radiculitis symptoms. He prescribed a Prednisone taper, Cyclobenzaprine, and referred Petitioner to physical therapy with dry needling. Dr. Newman stated that Petitioner was fine to work on Friday and he did not require any restrictions. He provided Petitioner with a work slip for 7/3/24 and advised him to continue to follow up with NP Lyons in six weeks. (PX10, p. 9)

On 7/5/24, Respondent's Office of Human Resources authored a letter to Petitioner advising him to complete workers compensation claim forms. (PX2)

On 7/7/24, Petitioner returned to Springfield Clinic Urgent Care and reported continued neck and upper back pain related to workplace injury. (PX6, p. 34) He reported that the Prednisone somewhat improved his symptoms, but it caused sleeplessness and increased anxiety. He rated his neck pain 8/10. PA Elizabeth Sweitzer noted that Petitioner worked for Respondent, and he drove a lawn mower over a small hole that caused the seat to bounce and jar his back and hips. Petitioner reported constant neck pain rated 8/10 and difficulty sleeping. He reported that Respondent wanted him to return to work but he did not feel capable of completing his work duties due to pain. Petitioner denied weakness or numbness in his upper and lower extremities. PA Sweitzer performed a physical examination that revealed tenderness to palpation over the paravertebral musculature of the cervical spine and posterior shoulder with full range of motion. PA Sweitzer thought Petitioner's neck and left shoulder pain was secondary to muscle spasms and a cervical disc herniation. She prescribed Nabunetone and Tizanidine and ordered Petitioner to discontinue Prednisone and Cyclobenzaprine. Petitioner was placed off work from 7/5/24 through 7/10/24. (PX10, p. 10)

On 7/8/24, Petitioner texted Mr. Moffett, "I will not be in. The doctor has written me off til at least Wednesday for my back". (RX4)

On 7/9/24, Respondent's Civil Service Commission authored a letter to Petitioner enclosing a Notice of Probationary Discharge terminating his employment. The Notice was sent to Petitioner via certified mail on 7/9/24 and signed by Department Director Greg Tally on 6/25/24, the HR Director on 6/25/24, and the Mayor of the City of Springfield on 7/1/24.

On 7/10/24, Petitioner was examined by Dr. Alexander Cummings for severe low back, upper back, neck, hip, and right index finger pain. (PX8) Petitioner reported a history of both work accidents. He reported experiencing immediate low back pain when the front of the mower went up in the air. He stated that he reported the 5/24/24 injury to his supervisor and was told to just watch it for a while. Petitioner stated he continued to work but his anxiety increased, and his primary doctor took him off work for a couple of weeks. He has not worked since. Petitioner reported that his low back pain was severe, worse on the right, and radiated into his hip and up his back and now his upper back and neck were painful. Petitioner stated his upper neck,

especially on the right, was currently worse than his low back pain. Physical examination revealed tenderness to palpation along the paraspinal muscles and trapezius, right greater than left, with limited range of motion and pain at all end points. Dr. Cummings wanted to review Petitioner's medical records and referred him to physical therapy. Petitioner was placed off work and instructed to follow up in one week.

On 7/11/24, Petitioner texted Mr. Moffett, "I went back to the doctor yesterday and they are keeping me off work for now".

On 7/15/24, Petitioner presented to his primary care physician Dr. Kathy McAfee at Springfield Clinic for complaints of low back, bilateral hip, and neck pain. (PX6, p. 40) Dr. McAfee noted Petitioner's pain originally started after he was mowing at work and went over a hole that jarred the mower. Petitioner advised that he filed a workers' comp claim today. He reported that he saw Dr. Cummings last week who was closer to his home and is a work comp doctor. He requested a referral to Dr. Cummings. Dr. McAfee noted that Petitioner's anxiety was much worse "from all of this work comp confusion". The CT scan of his finger had not been performed because a work comp case had not been opened. Petitioner advised he would contact the workman's comp case manager to get approval. He was instructed to continue taking Tizanidine as needed for his neck and back pain. Dr. McAfee stated there was no need to refer Petitioner to Dr. Cummings since he was already treating with him.

On 7/17/24, Petitioner followed up with Dr. Cummings with unchanged complaints. (PX8, p. 15-21) Petitioner continued to take medication and muscle relaxers and his neck pain was constant. His low back pain was not constant but increased with bending and twisting. He had bilateral hip pain that increased with climbing stairs. The pad of Petitioner's right index finger continued to be painful, and he reported that if it catches on a firm area it increases his pain. Petitioner was not able to begin physical therapy at that time. Dr. Cummings placed Petitioner on light duty restrictions and refilled his pain medication and muscle relaxers.

On 8/5/24, Petitioner followed up with Dr. Cummings with unchanged symptoms. (PX8, 24) He reported sharp, constant neck pain that radiated to the top of both shoulders. His pain increased when turning his head and he had some tingling in his right arm. His low back pain was constant, but not as painful as his neck, and increased with prolonged standing and walking. He stated his hips felt bruised and painful. Dr. Cummings noted a new symptom appeared about one week ago when Petitioner had numbness in the ball of his right great toe that was constant. He also had tingling in his left foot at times. Petitioner stated he could not get into physical therapy until September and Dr. Cummings issued a new order for therapy at a different facility. Dr. Cummings noted that the symptoms in Petitioner's feet was concerning for possible central cord syndrome of the cervical spine. He ordered a cervical spine MRI and continued Petitioner's light duty restrictions.

On 8/28/24, Petitioner returned to psychiatrist Dr. Medina and reported he was taking his medications and felt groggy in the morning. His mood varied and he had some financial stress. Petitioner reported he got hurt at work. His anxiety and appetite worsened, but his sleep and sadness recently improved. Petitioner was not in therapy and was instructed to continue his medications and follow up in four months. (PX11, p. 5-6)

Petitioner followed up with Dr. Cummings on 9/11/24, 10/16/24, and 11/20/24 with unchanged symptoms. The recommended treatment had not been approved, including the cervical spine MRI and physical therapy. He continued Petitioner's light duty restrictions.

On 1/20/25, Petitioner returned to Dr. Medina and reported he has been more talkative, and he had difficulty focusing. His disorganization, attention span, sadness, sleep, and anxiety had worsened. His appetite had improved, and he had no issues associated with anger. Dr. Medina noted that Petitioner's tendency to talk excessively had worsened. (PX11, p. 7-8)

Petitioner returned to Dr. Cummings on 1/22/25 and 2/24/25 with unchanged symptoms. He reported his neck pain was constant at 8/10. He continued to have low back pain and numbness in his right foot around the big toe area. He had ongoing right index finger pain and noted a raised area on his finger that hurt to touch. Dr. Cummings noted a 3 mm x 1 mm area of raised firm tender skin just past the DIP joint toward the radial aspect of Petitioner's finger. He could not rule out a foreign body. Dr. Cummings noted Petitioner had poor posture with his head leaning forward. He had tenderness to the midline lower cervical spine and trapezius, pain with range of motion, and negative Spurling's test bilaterally. Dr. Cummings continued to recommend a cervical spine MRI, CT scan of Petitioner's finger, and physical therapy. Petitioner's light duty restrictions were continued.

Three Employee Accident Reports were admitted into evidence, none of which were dated. Although Petitioner testified that he did not prepare or sign the accident reports admitted into evidence, his signature on the Employee Accident Report admitted into evidence as PX1 matches his signature on a Settlement Contract approved in Case No. 17-WC-023066 which was admitted into evidence as PX13. The report indicates dates of accident "05/23-24/2024". (PX1) Petitioner reported that on 5/23/24 he was picking up brush, branches, and debris and "my right index finger was stuck by a thorn or something of that nature. It then became infected, was swollen and hot to the touch and extremely painful". He reported that on 5/24/24, "I was on a zero turn mower and hit a hole, which jarred my hips, neck, and lower back. In which bruised and irritated more parts than thought at first". He stated that he was operating the mower with both hands and when he hit a hole on uneven ground the front end of the mower tilted upward into the air and jarred his hips, neck, and back. Petitioner did not indicate what time either accident occurred. He reported that he received treatment from Dr. Srinivasan, Dr. Abraham, NP Wright, PA Lyons, Dr. Newman, PA Sweitzer, and Dr. Cummings. The Arbitrator notes that Petitioner was initially examined by Dr. Cummings on 7/10/24 and he treated with the other listed physicians prior to that date. The report noted that Petitioner was hired by Respondent on 5/13/24 and his last day of work was on 6/7/24.

Respondent admitted two additional accident reports into evidence that were not signed or dated. (RX2) The reports indicate that Petitioner's injury on 5/23/24 occurred at 1:37 p.m., and his injury on 5/24/24 occurred at 9:36 a.m. It was noted that Petitioner was wearing gloves at the time of the 5/23/24 accident. The remainder of the reports are consistent with Petitioner's Accident Report (PX1).

On 7/15/24, a Supervisor's Report of Accident was prepared and signed by Greg Tally. (RX2) It was noted that Petitioner was picking up small limbs by hand and placing them in the

back of a truck on 5/23/24. His shift was scheduled to begin at 7:00 a.m. on 5/23/24 but he overslept and arrived late. Petitioner's Supervisor, Jeff Moffett, reported that Petitioner told him on 5/24/24 at 7:00 a.m. that his finger was bothering him from the day before and he was not sure what he had done. Mr. Moffett stated that Petitioner told him he was fine and did not want to fill out a report. Mr. Moffett was informed by the job Foreman that Petitioner was wearing gloves while picking up limbs.

On 7/16/24, a second Supervisor's Report of Accident was prepared and signed by Greg Tally. (RX2) The report indicated that Petitioner stated in a text message on 6/26/24 that he hurt his back on 5/24/24 when the mower hit a hole. No notice of injury was reported at that time and the accident was not investigated.

Petitioner admitted job search logs into evidence from 11/3/24 through 2/23/25. (PX12) Petitioner allegedly made 78 contacts with potential employers which was equally split between in-person and online applications.

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.

Petitioner testified that on 5/23/24, around 1:30 to 2:00 p.m., he was picking up limbs and something pricked his right index finger. He completed his work shift at 3:00 p.m., went home to shower, and noticed swelling in his finger that evening.

Petitioner presented to Springfield Clinic Urgent Care at 7:04 p.m. on the day of the accident. He reported that he was working outside clearing a lot of brush today and he noticed swelling, redness, and pain after showering tonight. He was wearing gloves and was unsure if he poked himself with a stick or some type of foliage. NP Alissa Howard noted right hand mild swelling and erythema to the volar index finger. Petitioner's finger was tender to touch with no abrasions or wounds. He was diagnosed with cellulitis of the finger and prescribed Bactrim.

Mr. Moffett testified that on 5/24/24, at 7:00 a.m., Petitioner told him he got something in his finger, and it was bothering him a little. Mr. Moffett asked the Director of the cemetery if Petitioner had to fill out an accident report and he told him only if his finger continued to bother him or worsened. Mr. Moffett stated he looked at Petitioner's finger that morning and did not really see anything.

On 7/15/24, a Supervisor's Report of Accident was prepared and signed by Department Director Greg Tally. (RX2) It was noted that Petitioner was picking up small limbs by hand and placing them in the back of a truck on 5/23/24. His shift was scheduled to begin at 7:00 a.m. on 5/23/24 but he overslept and arrived late. Mr. Moffett confirmed that Petitioner told him the next morning, on 5/24/24 at 7:00 a.m., that his finger was bothering him from the day before and he was not sure what he had done. Mr. Moffett stated that Petitioner told him he was fine and did not want to fill out a report.

Based on the evidence as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of his employment with Respondent on 5/23/24.

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

There was no evidence that Petitioner had any injuries or treatment to his right index finger prior to 5/23/24. It is undisputed that Respondent received notice of Petitioner's accident the morning after it occurred and Mr. Moffett inspected Petitioner's finger on 5/24/24.

Petitioner sought medical treatment within hours of his injury. He presented to Springfield Clinic Urgent Care at 7:04 p.m. the day of the accident and provided a consistent history of injury. He reported pain and swelling in his finger. NP Howard noted right hand mild swelling and erythema to the volar index finger. Petitioner's finger was tender to touch with no abrasions or wounds. He was diagnosed with cellulitis of the finger and prescribed Bactrim.

Petitioner worked his full 8-hour shift on Friday, 5/24/24, and was scheduled off work from 5/25/24 through 5/27/24 for the weekend and holiday (Monday). On Tuesday, 5/28/24, Petitioner worked from 12:31 p.m. to 3:00 p.m. due to a child illness. He worked his full 8-hour shift on 5/29/24 through 5/31/24. Petitioner was scheduled off work on 6/1/24 and 6/2/24 (Saturday and Sunday), and worked his regular 8-hour shift on Monday, 6/3/24. Petitioner took off work on 6/4/24 for illness. He presented to urgent care that day with vomiting and diarrhea. He was diagnosed with gastroenteritis and released to return to work on 6/6/24. Petitioner took off work on 6/6/24 for the flu. Petitioner never informed Respondent that his time off work between 5/28/24 and 6/6/24 was due to his finger injury.

Petitioner did not receive treatment for his finger again until 6/6/24 when he presented to urgent care with complaints of feeling tired and weak. He requested a work note for more time off. He was diagnosed with acute sinusitis. Petitioner mentioned he had continued right index finger pain and was concerned there was a foreign body. A history of his treatment on 5/23/24 was noted and that he initially improved with Bactrim, but he recently noticed increased swelling and redness. Dr. Srinivasan injected Petitioner's finger with lidocaine and removed a callus formation on the palmar surface near the distal phalanx area of his finger. Inspection revealed no evidence of a foreign body. Additional antibiotics were prescribed. Petitioner was provided an off work slip for 6/6/24 and released to return to work on 6/7/24. Petitioner worked his full 8-hour shift on 6/7/24, was scheduled off work for the weekend on 6/8/24 and 6/9/24, and he last worked for Respondent on 6/10/24.

On 6/11/24, Petitioner presented to prompt care for continued fatigue and depression. He did not mention his finger condition. He took off work on 6/11/24 through 6/13/24 for a family

emergency. Petitioner presented to psychiatrist Dr. Medina on 6/13/24 and stated he felt irritable and tired. He reported he got a new job but got sick and missed six days of work. Petitioner requested a work slip excusing him for the last six days. Petitioner told Dr. Medina that he had been more anxious and was worried he would lose his job. He had increased difficulty sleeping, worsening of appetite, and anger outbursts. Dr. Medina provided Petitioner with off work slips for 6/11/24 through 6/14/24 and 6/17/24 through 6/20/24 due to anxiety. Petitioner did not mention his finger injury or condition.

Petitioner texted Mr. Moffett every workday from 6/14/24 through 6/20/24 advising he would not be in to work due to doctor's orders. He did not mention that his time off work was related to his finger injury. When Petitioner was scheduled to return to work on 6/21/24 per Dr. Medina's orders, he texted Mr. Moffett that he went to the doctor yesterday and was put on another medication that "went way wrong and he doesn't want me operating anything until it's out of my system". There is no evidence in the record that Petitioner treated on 6/20/24. Petitioner texted Mr. Moffett on 6/20/24 that he had been "cleared to come back tomorrow"; however, Petitioner presented to Dr. Abraham on 6/21/24 for a one-day history of high anxiety and depression. He also reported continued right index finger pain. Dr. Abraham noted mild redness without significant swelling, normal range of motion, strength, and sensation. X-rays of Petitioner's finger were unremarkable. He was instructed to alternate ibuprofen and Tylenol. Dr. Abraham provided Petitioner with an off work slip for 6/21/24.

Petitioner was scheduled off work on 6/22/24 and 6/23/24 for the weekend. Rather than returning to work on Monday, 6/24/24, he returned to Dr. Abraham for anxiety and depression for several days. Petitioner reported he was under a lot of undue stress due to his workplace questioning his absenteeism and a relationship currently. Petitioner requested behavioral therapy. Dr. Abraham diagnosed anxiety reaction and instructed him to follow up with Dr. Medina for a referral for cognitive behavioral therapy. Dr. Abraham discussed looking into FMLA to protect Petitioner's employment status. He provided Petitioner with a work slip for the 6/24/24 visit. Petitioner texted Mr. Moffett on 6/24/24 and 6/25/24 advising he was still under the doctor's care and was being reevaluated. He did not mention he was taking off work due to his finger injury.

On 6/25/24, the Department Director Greg Tally signed a Notice of Probationary Discharge terminating Petitioner's employment. Coincidentally, the next day on 6/26/24 at 2:15 p.m., Petitioner texted Mr. Moffett, "Sorry I'm just now calling in but I have been under meds from the doctor and the finger I told you that I got something in while picking up branches that day is really infected as well so I'm on meds for that". The Arbitrator notes that this text to Mr. Moffett was the first time Petitioner mentioned his condition, treatment, or time off related to his finger in the 14 texts he sent Mr. Moffett from 5/28/24 through 6/26/24. There is no evidence in the record that Respondent was aware that Petitioner was treating for his finger or required time off work for his finger injury prior to 6/26/24. The Arbitrator also does not find Petitioner's statement credible that he had been taking medications for his finger because it was "really infected". Petitioner last saw Dr. Abraham on 6/21/24 whose examination revealed some mild redness without significant swelling, normal range of motion, strength, and sensation. X-rays of Petitioner's finger were negative and Dr. Abraham did not place Petitioner off work.

On 6/28/24, Petitioner texted Mr. Moffett, “I tried calling this morning to speak to you to tell you I wouldn’t be in But you never called back and I forgot to text you unlike I have everyday so im texting you to tell you in writing I apparently won’t be in today. I go back to the doctors today for my finger and my hip and back also today. I will update you as soon as I know something”.

On 6/28/24, Petitioner presented to the internal medicine clinic and provided a detailed history of his interactions with Respondent related to his finger injury. Petitioner reported he was pressured into not filling out a work incident report; he was extremely depressed and anxious because of this situation; and he felt crippled with anxiety and stayed up until 6:00 a.m. Petitioner reported that Mr. Moffett told him that he and the other employees would lose their safety bonus when he reported his finger injury. He felt like everyone at work treated him differently now and it caused him a lot of anxiety. He stated he did not want to go to work anymore and requested an off work note. The Arbitrator notes that from 5/24/24 through 6/28/24, Petitioner only worked 6.5 days and did not testify that other employees or Mr. Moffett treated him “differently” during that time. He had not worked for 18 days prior to his visit on 6/28/24 wherein he reported being treated differently at work. Petitioner’s medical records and texts directly contradict the history he provided to Mr. Moffett and his physicians after 6/25/24, the date the Notice of Probationary Discharge was signed. The Arbitrator acknowledges that the Notice of Probationary Discharge was not mailed to Petitioner until 7/9/24; however, there is a stark contrast in his documentation and notification to Respondent of his treatment and time off related to his finger one day after the date of discharge.

The Arbitrator finds Petitioner’s credibility to be significantly compromised. He received treatment for his finger on 5/23/24, worked full duty for 5.5 days until he treated again on 6/6/24, at which time Dr. Srinivasan removed a callus formation on his finger and found no evidence of a foreign body. On 6/21/24, Dr. Abraham noted mild redness without significant swelling in his finger, normal range of motion, strength, and sensation. An x-ray of Petitioner’s finger was unremarkable. He was instructed to alternate ibuprofen and Tylenol and to continue observation of his finger. At his visit on 6/28/24, NP Wright ordered a CT scan of Petitioner’s finger due to his complaints of numbness, swelling, and redness. She noted that Petitioner appeared anxious with quick speech and recommended that he return to his psychiatrist for cognitive behavioral therapy. She placed him off work through 6/30/24 due to anxiety.

The Arbitrator observed Petitioner’s right index finger at trial and found no swelling, deformity, redness, or signs of infection. Throughout the trial Petitioner appeared to be anxious with very rapid speech and he was wringing his hands without appearing to have pain in his finger. Based on the totality of the evidence, the Arbitrator finds that Petitioner’s current condition of ill-being of the right index finger is causally connected to the 5/23/24 work accident through 6/28/24, and not thereafter.

Issue (G): What were Petitioner’s earnings?

Petitioner testified that he was hired by Respondent at an annual salary of, “I believe \$43,300 and some dollars and 76 cents”. He was scheduled to work 40 hours a week. Petitioner’s wage records show he earned gross wages of \$834.88 per 40 hours worked, representing \$20.872

per hour or \$43,413.76 per year. (RX1) The Arbitrator finds Petitioner's testimony consistent with the wage records.

Therefore, the Arbitrator finds that Petitioner's average weekly wage pursuant to Section 10 of the Act was \$834.88.

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

Issue (K): Is Petitioner entitled to any prospective medical care?

Based on the findings as to accident and causal connection, the Arbitrator finds that Petitioner is entitled to reasonable and necessary medical expenses through 6/28/24. Respondent shall pay the medical expenses contained in Petitioner's Group Exhibit 4 for treatment directly related to Petitioner's right index finger, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. The Arbitrator specifically awards medical expenses for treatment received at Springfield Clinic for dates of service 5/23/24 (\$578.00), 6/6/24 (\$578.00), 6/21/24 (\$578.00 and \$171.00), and 6/28/24 (\$803.00). The Arbitrator denies medical expenses related to treatment received at Springfield Clinic on 6/4/24, 6/11/24, 6/24/24, 6/27/24, and 7/1/24 through 7/15/24 as said treatment is not causally related to Petitioner's right index finger injury. The Arbitrator further denies all medical expenses for treatment received by Dr. Alexander Cummings contained in Petitioner's Group Exhibit 5 as said treatment was after 6/28/24.

The Arbitrator finds that Petitioner is not entitled to prospective medical care.

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

Petitioner claims entitlement to temporary total disability benefits from 6/11/24 through 2/28/25. Respondent disputes liability for TTD benefits.

On 6/11/24, Petitioner presented to Springfield Clinic and reported he had been seen in prompt care twice for fatigue and depression and was prescribed Clindamycin that caused stomach issues and nausea. Petitioner reported he just started a new job at a cemetery mowing grass which had increased his chronic sinusitis. He was advised to wear a mask while mowing. He was not placed off work for his finger injury. Petitioner texted Mr. Moffett the same day and reported he was taking off work for a family emergency. Petitioner also took off work on 6/12/24 because his family was going through "heartache", and again on 6/13/24 and stated he would have FMLA or a note from his doctor.

On 6/13/24, Dr. Madina placed Petitioner off work from 6/11/24 through 6/14/24 and 6/17/24 through 6/20/24 due to anxiety. On 6/21/24, Petitioner took off work due to an issue with a new medication. He treated with Dr. Abraham on 6/21/24 for a one-day history of high anxiety and depression. Petitioner reported continued right index finger pain at that visit and an x-ray of his finger was performed. Dr. Abraham provided Petitioner with an off work slip for 6/21/24; however, he did not place Petitioner off work for his finger injury.

On 6/24/24, Dr. Abraham noted Petitioner had anxiety and depression for several days. He recommended cognitive behavioral therapy and provided Petitioner with an off work slip for 6/24/24. He did not evaluate Petitioner's finger at that visit.

Based on the Arbitrator's finds that Petitioner's current condition of ill-being of the right index finger is causally connected to the 5/23/24 work accident through 6/28/24, and not thereafter, Petitioner's claim for temporary total disability benefits is denied and no TTD benefits are awarded herein.

Issue (O): Number of dependent children.

Petitioner alleged he had three dependent children under the age of 18 at the time of accident on his Application for Adjustment of Claim filed on 7/23/24. (AX3) Petitioner noted on his accident report that he had two dependent children. (PX1) Petitioner testified at trial that at the time of his work accident he had three dependent children ages 10, 11, and 18. His 18 year old child was still in school and turned 19 in June 2024. Therefore, the Arbitrator finds that Petitioner had three dependent children at the time of his accident on 5/23/24.

This award shall in no instance be a bar to further hearing and determination of any additional amount of medical benefits or compensation for a temporary or permanent disability, if any.



MARCH 26 2025

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC031035
Case Name	INSURANCE COMPLIANCE v. 100 SOUTH CHOP HOUSE & GRILL
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0480
Number of Pages of Decision	7
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Benjamin Pryde
Respondent Attorney	

DATE FILED: 11/26/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Department of Insurance,

Petitioner,

vs.

No. 24 WC 31035

RR Restaurant Corp. d/b/a 100 South Chop House & Grill, and
Richard Ranieri, Individually and as Officer,

Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner brings this action by and through the Office of the Illinois Attorney General, against Respondents, alleging violations of §4(a) of the Illinois Workers' Compensation Act ("Act") and §9100 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission ("Rules") for failure to procure mandatory workers' compensation insurance. Petitioner alleges RR Restaurant Corp., and Richard Ranieri and Michael Spilotro, individually and as officers, knowingly and willfully lacked workers' compensation insurance for 2,337 days from July 20, 2005 to July 2, 2007, December 30, 2008 to June 10, 2010, February 8, 2012 to June 24, 2012, July 4, 2013 to November 6, 2014, and January 8, 2023 to April 18, 2024. Proper and timely notice was provided to Respondents RR Restaurant Corp. and Richard Ranieri, and a hearing was held before Commissioner Stephen Mathis in Geneva, Illinois on May 20, 2025. Petitioner was represented by the Office of the Illinois Attorney General. Respondents did not appear in person or through counsel.

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondents knowingly and willfully violated §4(a) of the Act and §9100 of the Rules from July 20, 2005 to July 2, 2007, December 30, 2008 to June 10, 2010, February 8, 2012 to June 24, 2012, July 4, 2013 to November 6, 2014, and January 8, 2023 to April 18, 2024. The Commission also finds that Respondents were in default after proper and timely notice. Accordingly, Respondents shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with §4(d) of the Act in the sum of \$1,168,500.00.

I. Findings of Fact

Assistant Attorney General Drew Dierkes stated on the record that notice of the May 20, 2025 hearing date was sent to RR Restaurant Corp. at 100 S. York St, Elmhurst, IL 60126 and 5N260 Bunker Ter, Itasca, IL 60143 by certified mail. PX1. On December 13, 2024, Investigator Espinosa traveled to 100 S. York St, Elmhurst, IL 60126, location of 100 South Chop House & Grill, spoke to a server, provided a business card, and asked to have Ranieri contact him. PX2. On December 13, 2024, Ranieri contacted Investigator Espinosa and arranged to meet at the Shell gas station, located at 2449 W. Lake St, Addison, IL, where Investigator Espinosa personally served Ranieri with notice of a January 16, 2025 hearing date. *Id.* Petitioner failed to prove notice to Michael Spilotro, a past secretary and officer.

George Sweeney, Assistant Deputy Director of Workers' Compensation Compliance for the Illinois Department of Insurance, testified that the investigation of Respondents began in spring 2024 after receiving a complaint from the Illinois Department of Labor. On April 8, 2024, a State of Illinois Notice of Non-Compliance form was sent via certified mail by his office to Respondent Richard Ranieri, individually and as president of 100 South Chop House and Grill, at 100 S. York Rd, Elmhurst, Illinois 60126. PX3. The Notice stated that according to Commission records, Respondents were not in compliance with the requirements of Section 4(a) of the Act for the period beginning January 9, 2023 through April 8, 2024. *Id.* On August 12, 2024, Petitioner sent a State of Illinois Notice to Employer of Insurance Compliance Informal Conference, set for September 4, 2024 at 11:00 a.m. PX4. Assistant Deputy Director Sweeney did not know whether anyone appeared for the meeting on that specific date, but indicated there had been conversations with Respondent Ranieri.

The Department of Insurance also requested records from the Illinois Secretary of State, which indicated Respondent RR Restaurant was incorporated on March 10, 2000. PX6, p 1. The 2001 and 2002 Annual Reports list Richard Ranieri, 100 South York Road, Elmhurst, IL 60126 as President, Secretary, Treasurer, and Director. PX6, p 4, 6. The 2003 Annual Report lists Michael Spilotro, at the same address, as Secretary, with Ranieri as President, Treasurer, and Director. PX6, p 8. The 2004 and 2005 Annual Reports list Ranieri as President and Spilotro as Secretary. PX6, p 10, 12. The 2006-2010 Annual Reports list Ranieri as President and Officer/Director and Spilotro as Secretary and Officer/Director. PX6, p 16, 18, 20, 22, 24. The 2011 and 2012 Annual Reports list Ranieri as President. PX6, p 27, 30. The 2013 and 2014 Annual Reports list Ranieri as President and Director. PX6, p 34, 36. The 2015-2021 Annual Reports list Ranieri as President, Secretary, and Director. PX6, p 41, 43, 48, 49, 50, 52, 54. The 2022-2024 Annual Reports list Ranieri, 5N260 Bunker Ter, Itasca, IL 60143, as President, Secretary, and Director. PX6, p 58-60.

Assistant Deputy Director Sweeney testified to his belief that Respondents were required by the Act to provide workers' compensation insurance coverage for their employees under the automatic coverage provisions in that they serve alcohol and food to the public and goods or services are sold to the public.

The Department of Insurance also requested insurance information from the National Council on Compensation Insurance (NCCI). Topaz Bertino certified that the NCCI is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that Respondents did not file policy information showing proof of workers' compensation insurance from July 20, 2005 to July 2, 2007, from July 2, 2009 to June 10, 2010, from June 7, 2012 to June 24, 2012, from May 2, 2014 to November 6, 2014,

and from May 24, 2023 to April 18, 2024. PX7. Records showed Respondents had a workers' compensation insurance policy from July 1, 2008 to July 1, 2009, but that it was cancelled effective December 29, 2008. *Id.* Records also showed Respondents had a workers' compensation insurance policy from June 6, 2011 to June 6, 2012, but that it was cancelled effective February 7, 2012. *Id.* Records also showed Respondents had a workers' compensation insurance policy from May 1, 2013 to May 1, 2014, but that it was cancelled effective July 3, 2013. *Id.* Records also showed Respondents had a workers' compensation insurance policy from May 23, 2022 to May 23, 2023, but that it was cancelled effective January 8, 2023. *Id.*

The Department of Insurance conducted an inquiry into whether Respondents were self-insured by making a request to the Commission's Office of Self-Insurance Administration. A sworn certification by Wendy Wiley of the Commission's Office of Self-Insurance Administration dated September 24, 2024 stated that no certificate of approval to self-insure was issued by the Commission to RR Restaurant Corp. DBA 100 South Chophouse Bar & Grill, 100 S. York Rd, Elmhurst, IL 60126, FEIN: 364351948 from March 10, 2000 to the present. PX8.

The Department of Insurance requested records from the Illinois Department of Revenue who certified that the department had processed Illinois quarterly withholding income tax returns for periods from September 2007 through March 2009 (PX9, p 5-11) and March 2011 through March 2024 (PX9, p 12-113). The Illinois Department of Revenue noted quarterly withholding income tax returns for periods from December 2000 through June 2007 and June 2009 through December 2010 had been destroyed. PX9, p 171-172. The records show compensation paid to employees for the time periods provided.

Lastly, the Department of Insurance requested records from the Illinois Department of Employment Security who certified copies of the Employer's Quarterly Wage Reports for the first quarter of 2010 and the first quarter of 2013 through the second quarter of 2024. PX10. The records show Respondents had employees for the time periods provided.

II. Conclusions of Law

The Commission's authority and jurisdiction over insurance non-compliance cases is authorized by Section 4(d) the Act, as well as the Rules. Under Section 4 of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance, whether this is done through being self-insured, through security, indemnity, or bond or through a purchased policy. Section 9100.90 of the Rules codifies the language of the Act, and additionally describes the notice of non-compliance required, as well as the procedures of the Insurance Compliance Division, and how hearings are to be conducted. Reasonable and proper notice of the proceedings, as noted above, was provided to Respondents RR Restaurant Corp. and Richard Ranieri.

The Commission first addresses whether Respondents are subject to the Act. Pursuant to §3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including those "engaged in any department of the following enterprises or businesses which are declared to be extra hazardous, namely:

* * *

12. Establishments open to the general public wherein alcoholic beverages are sold to the general public for consumption on the premises.

* * *

14. Any business or enterprise serving food to the public for consumption on the premises wherein any employee as a substantial part of the employee's work uses handcutting instruments or slicing machines or other devices for the cutting of meat or other food or wherein any employee is in the hazard of being scalded or burned by hot grease, hot water, hot foods, or other hot fluids, substances or objects." 820 ILCS 305/3(12), (14).

The Commission finds that Respondents' business falls within these provisions of the Act based upon Assistant Deputy Director Sweeney's testimony that Respondents operated a restaurant and therefore were subject to the Act. Accordingly, the Commission finds that Respondents' business engaged in work which automatically fell within the provisions of the Act.

Pursuant to §4(a) of the Act, all employers who come within the provisions of the Act are required to provide workers' compensation insurance. 820 ILCS 305/4(a). Section 9100.90(a) of our Rules similarly provides that any employer subject to Section §3 of the Act shall insure payment of compensation required by §4 of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation using an insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a). The Rules also provide that a certification from a Commission employee "that an employer has not been approved as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(c)(3)(E). Additionally, "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(c)(3)(D).

Here, Petitioner submitted the NCCI certification that Respondents did not file policy information showing proof of workers' compensation insurance from July 20, 2005 to July 2, 2007, from July 2, 2009 to June 10, 2010, from June 7, 2012 to June 24, 2012, from May 2, 2014 to November 6, 2014, and May 24, 2023 to April 18, 2024. PX 7. Records showed Respondents had a workers' compensation insurance policy from July 1, 2008 to July 1, 2009, but that it was cancelled effective December 29, 2008. *Id.* Records also showed Respondent had a workers' compensation insurance policy from June 6, 2011 to June 6, 2012, but that it was cancelled effective February 7, 2012. *Id.* Records also showed Respondents had a workers' compensation insurance policy from May 1, 2013 to May 1, 2014, but that it was cancelled effective July 3, 2013. *Id.* Records also showed Respondents had a workers' compensation insurance policy from May 23, 2022 to May 23, 2023, but that it was cancelled effective January 8, 2023. *Id.* Petitioner also submitted a certification from the Department of Self-Insurance that no certificate of approval to self-insure was issued by the Commission to Respondents from March 10, 2000 through September 24, 2024. PX 9. Assistant Deputy Director Sweeney concluded that Respondents did not have workers' compensation insurance, nor were they self-insured during the relevant time periods. Accordingly, the Commission concludes that Respondents failed to comply with the legal

obligations imposed by §4(a) of the Act from July 20, 2005 to July 2, 2007, December 30, 2008 to June 10, 2010, February 8, 2012 to June 24, 2012, July 4, 2013 to November 6, 2014, and January 8, 2023 to April 18, 2024.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states in pertinent part:

“Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section *** the Commission may assess a civil penalty of up to \$500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of \$10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer fails or refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty.” 820 ILCS 305/4(d).

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of its conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. *See State of Illinois v. Murphy Container Service*, 07 IWCC 1037.

The Commission finds that the length of time that Respondents were in violation of the Act in failing to obtain workers' compensation insurance was significant. Respondents failed to have insurance for 2,337 days from July 20, 2005 to July 2, 2007, December 30, 2008 to June 10, 2010, February 8, 2012 to June 24, 2012, July 4, 2013 to November 6, 2014, and January 8, 2023 to April 18, 2024. The Commission additionally notes the periods during which Respondents obtained insurance showing their knowledge that they were required to do so. The Commission notes no workers' compensation claims have been brought against Respondents. Having reviewed the record, the Commission finds no evidence as to the inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances. The record also shows that Respondents on four separate occasions had a workers' compensation policy but cancelled it prematurely.

The Commission finds Respondents knowingly and willfully failed to comply with the Act for a significant period of time. Based on the record before us, the Commission finds the appropriate penalty to be \$500.00 per each day of noncompliance. The Commission assesses a penalty of \$1,168,500.00 (\$500.00 x 2,337 days) against Respondents RR Restaurant Corp., and Richard Ranieri, individually and as officer. Petitioner admits that the penalty is not to be assessed against Michael Spilotro, individually and as officer, as Petitioner failed to prove notice to him. The Commission therefore strikes Michael Spilotro as a named party.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents RR Restaurant Corp., and Richard Ranieri, individually and as officer, pay to the Illinois Workers' Compensation Commission the sum of \$1,168,500.00 pursuant to Section 4(d) of the Act and Section 9100.90 of the Rules.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission or by an electronic format prescribed by the Commission and accepted by the Illinois Office of the Comptroller; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 S. LaSalle Street, 13th floor
Chicago, Illinois 60603

This decision may be judicially reviewed only as described in Section 19(f). This decision may be enforced in the same manner as a judgment entered by a court of competent jurisdiction and is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court. Bond for the removal of this cause to the Circuit Court by Respondents 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.

November 26, 2025

SJM
d-10/21/2025

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/s/ Stephen J. Mathis
Stephen J. Mathis

/s/ Amylee H. Simonovich
Amylee H. Simonovich

/s/ Kathryn A. Doerries
Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC012686
Case Name	Rene Chairez v. Midwest Cargo Systems
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0481
Number of Pages of Decision	17
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	Jill Kastner

DATE FILED: 11/26/2025

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF LAKE)

☐ 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Rene Chairez,

Petitioner,

vs.

No. 23 WC 12686

Midwest Cargo Systems,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Arbitrator awarded medical expenses as follows: "reasonable and necessary medical services rendered to Petitioner pursuant to Section 8(a) and **the Medical Fee schedule** to the following providers: \$4,438.00 to Deerfield-Bannockburn Fire Department; \$1,141.00 to MDI Mayfair; \$108,803.25 to Orthopaedic Hospital Of Wisconsin; and \$138,451.00 to Aspen Orthopedics as provided in Sections 8(a) and 8.2 of the Act." (Emphasis added.) The Commission strikes "the Medical Fee schedule" and replaces it with "8.2 of the Act." In other words, medical expenses shall be paid pursuant to Sections 8(a) and 8.2 of the Act, as a lower negotiated (Medicaid) rate applies to some bills.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 20, 2025, is hereby corrected, 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.

November 26, 2025

SJM/sk

o-10/21/2025

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/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Amylee H. Simonovich

Amylee H. Simonovich

/s/ Kathryn A. Doerries

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC012686
Case Name	Rene Chairez v. Midwest Cargo Systems
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Brent Eames
Respondent Attorney	Jill Kastner

DATE FILED: 2/20/2025

*/s/ Gerald Napleton, Arbitrator*Signature**INTEREST RATE WEEK OF FEBRUARY 19 2025 4.22%**

STATE OF ILLINOIS)
)SS.
 COUNTY OF LAKE)

☐	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)

Rene Chairez

Employee/Petitioner

v.

Midwest Cargo Systems

Employer/Respondent

Case # **23** WC **012686**

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 Napleton**, Arbitrator of the Commission, in the city of **Waukegan**, on **October 22, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to 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, **06/29/2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$77,758.20**; the average weekly wage was **\$1,495.35**.

On the date of accident, Petitioner was **46** years of age, *married* with **1** dependent children.

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

Respondent shall be given a credit of **\$58,268.59** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$58,268.59**.

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 \$996.90 /week for 120 6/7 weeks, commencing 06/30/22 through 10/22/24, as provided in Section 8(b) of the Act.

Respondent shall pay for the reasonable and necessary medical services rendered to Petitioner pursuant to Section 8(a) and the Medical Fee schedule to the following providers: \$4,438.00 to Deerfield-Bannockburn Fire Department; \$1,141.00 to MDI Mayfair; \$108,803.25 to Orthopaedic Hospital Of Wisconsin; and \$138,451.00 to Aspen Orthopedics as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care as prescribed by Petitioner's treating physician, Dr. Maciolek, including related and necessary 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.

/s/ Gerald W. Napleton

Signature of Arbitrator

FEBRUARY 20 2025

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

RENE CHAIREZ,	)	
	)	
Petitioner,	)	
v.	)	CASE NO: 23WC012686
	)	
MIDWEST CARGO SYSTEMS,	)	
	)	
Respondent.	)	

FINDINGS OF FACT

On June 29, 2022, the Petitioner was employed by the Respondent as a truck driver. (T7) His job duties consisted of driving the Respondent's semi-trailer truck to and from various locations to complete deliveries per the Respondent's instruction. (T7-8)

At the time of the incident, the petitioner was driving the Respondent's semi-trailer truck, and was transporting a load from Illinois back to the Respondent's facility in Wisconsin. (T10) During this trip, the Petitioner was involved in a rollover accident. (T10) The Petitioner has no recollection of the circumstances of the accident, and his first memory is waking up in the hospital. (T10-11)

Paramedics responded to the scene of the rollover accident and observed the Petitioner entrapped in the driver's seat of a semitruck which had rolled over onto its left side. (PX1, pg. 4) The Petitioner complained to the responding paramedics of pain to the left side of his chest, as well as pain to the mid thoracic section and lumbar section of his back. (PX1, pg. 4) Petitioner was removed from the entrapped location, placed in a cervical collar and onto a backboard, and was transported to the emergency department of Advocate Condell Medical Center. (PX1, pg. 4) (PX2)

Once at the hospital, Petitioner complained of left-sided shoulder pain, chest pain, and back pain which he developed following the accident. (PX 2, pg. 4) Diagnostic imaging reports revealed focal hemorrhagic contusion in Petitioner's left frontal lobe, acute comminuted fracture at mid-clavicular shaft, and extensive left lung contusion. (PX 2, pg. 6). Desai also found that there was no midline cervical spine tenderness, Petitioner's back was nontender, there was no thoracic or lumbar spine tenderness or step-offs, and Petitioner demonstrated normal range of motion and strength in his back without observable swelling or deformities. (PX2, pg. 5). Petitioner was diagnosed with a closed nondisplaced fracture of the shaft of the left clavicle, intraparenchymal hemorrhage of the brain, contusion of left lung, closed displaced fracture of the seventh cervical vertebra, and closed fracture of multiple ribs of the left side. (PX 2, pg. 8) Petitioner was admitted into the intensive care unit of the emergency department for further management of his injuries. (PX 2, pg. 8) Petitioner was discharged from the hospital on July 5, 2022. (PX 2, pg. 55). He was

instructed to follow up for additional care with his primary care physician for additional injury management and treatment. (PX 2, pg. 12)

Following his stay in the emergency department, on July 7, 2022, Petitioner presented to Aurora Medical Group for in-person consultation with his primary care physician, Dr. David Stolp. (T12) (PX 3, pg. 4) Dr. David Stolp evaluated the Petitioner and diagnosed him with a nondisplaced fracture of the shaft of the left clavicle, pericardial effusion, concussion with loss of consciousness, closed fracture of multiple ribs of the left side, closed nondisclosed fracture of seventh cervical vertebra, and constipation. (PX 3, pg. 6-7) Petitioner was recommended to follow up with multiple specialists to address his various conditions of ill-being at Aspen Orthopedic Specialists. (PX 3, pg. 6-7) (T12-13)

After the Petitioner was discharged from the hospital, he was taking narcotic pain medications which were prescribed by Dr. Stop, and he was limiting all physical movement and activity. (T14) On July 19, 2022, Petitioner returned for a follow-up consultation with Dr. Stolp. (PX 3, pg. 14) Petitioner continued to complain of pain in his ribs, and reported that the prescribed oxycodone was not sufficient to resolve his ongoing pain complaints. (PX 3, pg. 14) In addition to complaints of difficulty ambulating and breathing due to the pain, the Petitioner complained of severe pain in his lower back. (PX 3, pgs. 15-16) His medications were adjusted, and he was recommended to follow up with the recommended orthopedic specialists at his earliest opportunity. (PX 3, pgs. 15-16)

On July 20, 2022, Petitioner presented to Aspen Orthopedic Specialists for the recommended consultations with the orthopedic specialists. (RX4 and RX5) On July 20, 2022, in the intake forms for Aspen Orthopedics, the Petitioner was asked to complete a form which requested that he diagram the pain which he experienced across his body. (PX.4, pg. 14) In addition to documenting pain across his neck, upper extremities, and upper back, the Petitioner documented stabbing pain across his lower back. (PX.4, pg. 14) (T14-15)

During his initial visit, the Petitioner was examined by a PA on Aspen's spine team. (PX4, pg. 2) The Petitioner was diagnosed with polytrauma because of the subject automobile accident, and was instructed to remain in a cervical collar. (PX4, pg. 3) He was advised to continue taking narcotic pain medications as prescribed by his primary care physician, and he was restricted from work. (PX4, pg. 3) He was referred to Dr. Ryan Kehoe to address his clavicular fracture, and he was instructed to return to the spine team to be evaluated by Dr. Lawrence Maciolek within the next several weeks. (PX4, pg. 3)

The Petitioner underwent his initial consultation with Dr. Ryan Kehoe on August 4, 2022 for the management of his clavicular fracture. (PX4, pg. 185) The Petitioner reported that he has been taking it easy and not doing much physical activity. (PX4, pg. 185) Dr. Kehoe diagnosed the Petitioner with a displaced fracture of the shaft of the left clavicle, as well as multiple fractures of the ribs on the left side with routine healing. (PX4, pg. 185) He recommended that the Petitioner continue to hold off on physical therapy at that time, and to return in several weeks to monitor his continued healing. (PX4, pg. 185)

During this period of the Petitioner's recovery, he was wearing a neck brace, a shoulder sling, and a wrap around his body to restrict movement. (T18-19) He spent approximately three months restricted to his recliner, and he was not physically moving around anywhere or doing anything active. (T18) If he needed to use the restroom, his wife would bring him a cup to relieve himself. (T19) The Petitioner described this period as like, "being a vegetable." (T14) He testified that he would only move his eyes, and not his body in any way. (T14)

The Petitioner followed up with the Aspen Orthopedics spine team and saw Dr. Maciolek's assistant on August 12, 2022. (PX4, pg. 186) He was advised to remain in the cervical collar for all activity and to remain off work. (PX4, pg. 187)

The Petitioner returned to see Dr. Kehoe for a recheck on August 25, 2022. (PX4, pg. 188) At this visit, Dr. Kehoe recommended that the Petitioner initiate some light physical therapy exercises focused on his shoulders. (PX4, pg. 188) He was encouraged to increase physical activity with the goal of getting out of the spine collar soon. (PX4, pg. 188)

As the Petitioner attempted to increase his physical activity, he noticed increased pain in his lower back. (T22) This was noticeable when he would stand up from a sitting position to try use the restroom. (T22) During this period, the Petitioner continued to take narcotic pain medications every four hours. (T20) The Petitioner testified that these medications would help him manage his pain, and they would "knock him out." (T20)

On September 12, 2022, the Petitioner initiated light physical therapy through Aspen Orthopedics. (T17) (PX4, pgs. 195-196) In his initial evaluation, he provided a history of suffering injuries to his neck, low back, and collarbone because of the subject motor vehicle accident. (PX4, pgs. 195) He was recommended a regimen of therapies which consisted of hot or cold packs, electrical stimulation, and some modest manual therapy exercises. (PX4, pg. 196) The Petitioner described these exercises as stretching his shoulders using rubber bands, and moving approximately two-pound weights back-and-forth with his hands. (T18)

On September 14, 2022, the Petitioner returned to see Dr. Maciolek for a follow-up evaluation. (PX4, pg. 197) At this visit, Dr. Maciolek cleared the Petitioner to initiate physical therapy for his cervical spine. (PX4, pg. 197) On September 20, 2022, the Petitioner had a reevaluation for physical therapy to incorporate the neck as well as the shoulders. (PX4, pg. 200) The regimen once again included hot or cold packs, electrical stimulation, and some modest manual therapy exercises. (PX4, pg. 201)

The Petitioner attempted to wean off the narcotic pain medications, and he noticed increased pain as he went without the medications. (PX4, pg. 211, 213) He continued to follow up with Dr. Kehoe and Dr. Maciolek and reported overall improvement with physical therapy. (PX4, pgs. 215-216) His doctors recommended that he continue with physical therapy, and they continued to restrict him from work. (PX4, pgs. 215-216)

On November 9, 2022, the Petitioner had a follow-up evaluation with Dr. Maciolek and reported significant improvement in his neck pain. (PX4, pg. 231) Dr. Maciolek recommended

that he continue with physical therapy and work restrictions with the goal of attempting to return to full duty work as a driver in four weeks after reevaluation. (PX4, pg. 231)

On November 10, 2022, the Petitioner returned for a follow-up evaluation with Dr. Kehoe. (PX4, pg. 232) He reported persistent pain across his left upper extremity and chest, but that he was pleased with his overall progress. (PX4, pg. 232) It was noted that he continued to ween down on oxycodone. (PX4, pg. 232) Dr. Kehoe recommended continued physical therapy and work restrictions. (PX4, pg. 232)

As the Petitioner attempted to ween off the narcotic pain medications, he experienced worsening symptoms. (PX4, pg. 241) On December 6, 2022, he reported to his physical therapist that he was having trouble with his recovery due to increased pain because of weening off the medications. (PX4, pgs. 245-246) On this date, he was required to stop therapy early due to too much pain. (PX4, pg. 246)

On December 14, 2022, the Petitioner reported to his therapist that he did not take any pain medication at all that day to test how he could perform in physical therapy. (PX4, pg. 249) The therapist reported less exercise tolerance given the lack of pain medications, and therapy was once again terminated early due to the Petitioner's complaints of pain. (PX4, pg. 250) The Petitioner testified that as he attempted to ween off his medications, he noticed a dull and numbing pain in his lower back. (T33)

The Petitioner reported for his follow-up visits with Dr. Kehoe and Dr. Maciolek's assistant on December 15, 2022 and December 16, 2022, respectively. (PX4, pgs. 251-252). He reported frustration with ongoing pain and discomfort due to attempting to ween off his pain medications. (PX4, pgs. 251-252) Dr. Kehoe adjusted the Petitioner's pain medications, and Dr. Maciolek's PA recommended an epidural steroid injection to address ongoing complaints of cervical pain and radiculopathy. (PX4, pgs. 251-252) Petitioner continued to be restricted from his full and unrestricted duties of a driver. (PX4, pgs. 251-252)

On January 13, 2023, the Petitioner was seen by Dr. Jeff Kleiner at the at the Pain Management Center of Wisconsin, S.C. (PX4, pgs. 79-83) At this visit, the Petitioner reported experiencing back pain during physical therapy with a radicular component, but that his ongoing neck pain remained his main concern. (PX4, pg. 80) After examination and evaluation, Dr. Kleiner diagnosed the Petitioner with a severe MVA with frontal subarachnoid hemorrhage, left clavicle comminuted fracture and left T2 through T7 rib fractures and left C7 transverse process fracture with severe chronic ongoing left neck and posterior shoulder pain, left rib pain and left clavicle pain. (PX4, pg. 82) Dr. Kleiner performed trigger point injections into the areas over the Petitioner's left upper trapezius muscles and made recommendations to adjust his medications. (PX4, pgs. 82-83)

On January 31, 2023, the Petitioner complained to his physical therapist that he was suffering from pain in his lower back. (T20-21) (PX5, pg. 14) The Petitioner reported that he suffered from back pain in the past, but these symptoms are worse as of late. (PX5, pg. 14) The Petitioner complained of worsening lower back pain along with radicular complaints down his left leg. (PX5, pg. 14) The Petitioner testified that this pain was not a result of any specific or acute

incident during his physical therapy exercises but was due to the increasing pain in his lower back. (T21)

The Petitioner returned to see Dr. Kehoe on February 9, 2023. (PX5, pg. 18) He reported continued pain which interfered with his ability to turn his head. (PX5, pg. 18) Dr. Kehoe recommended continued physical therapy, and continued to restrict the Petitioner from work. (PX5, pg. 18)

On February 10, 2023, the Petitioner followed up with the spine team, and saw Dr. Maciolek's assistant for an evaluation. (PX5, pg. 19) The note from this visit indicates that the Petitioner reported increasing back pain which started in physical therapy, and which interferes with his ability to perform his physical therapy exercises. (PX5, pg. 19) The notes further dictate that the only thing the Petitioner could attribute this back pain to is the subject work accident. (PX5, pg. 19) The Petitioner was diagnosed with lower back pain and radiculopathy, and an MRI of the lumbar spine was recommended. (PX5, pg. 19) Regarding the cervical spine, given the ongoing nature of Petitioner's significant pain complaints, an MRI was also ordered for the cervical spine, and Petitioner continued to be restricted from work. (PX5, pg. 20)

The Petitioner testified that he did not tell Dr. Maciolek's assistant that he suffered an injury during physical therapy. (T24) The Petitioner testified that he explained to Dr. Maciolek's assistant that he was trying to do the recommended therapy exercises, but he could not because they were too painful for his lower back. (T24)

The Petitioner underwent MRIs of his cervical spine and lumbar spine on February 15, 2023. (PX4, pgs. 95-96) The MRI report indicated a 1 mm of grade 1 spondylolisthesis, as well as mild right L5-S1 neural foraminal narrowing and marked left L5-S1 neural foraminal narrowing. (PX4, pg. 96) The Petitioner returned to the spine team on March 1, 2023 and met with Dr. Maciolek's assistant. (PX5, pgs. 31-32) The Petitioner was recommended to continue physical therapy for his cervical spine, and to initiate physical therapy for his lumbar spine. (PX5, pgs. 31-32) Petitioner was restricted from work. (PX5, pgs. 31-32)

The Petitioner followed up with the spine team on April 7, 2023 and was examined by Dr. Maciolek's assistant. (PX5, pg. 54) He reported that he believed he injured his back at the same time as his neck, but it only became more symptomatic recently. (PX5, pg. 54) It was noted the MRI findings were consistent with the Petitioner's symptoms, and physical therapy continued to be recommended. (PX5, pgs. 54-56)

The Petitioner continued to follow up with his doctors, and attend therapy for his upper-body injuries. (T27) However, the workers' compensation carrier would not approve the recommended treatment for the Petitioner's lower back. (PX4, pg. 282) (T27) On May 3, 2023, the Petitioner followed up with Dr. Maciolek's assistant to discuss the results of the cervical MRI. (PX4, pg. 328) The Petitioner was ordered to remain off work due to his cervical spine condition until his range of motion could be restored to a functional degree to drive a semi-truck. (PX4, pg. 328)

On May 18, 2023, the Petitioner returned for a follow-up visit with Dr. Kehoe to discuss his left shoulder and chest wall injuries. (PX4, pg. 284) Dr. Kehoe suggested that the Petitioner had “hit a wall” with his progress in physical therapy. (PX4, pg. 284) Dr. Kehoe suggested an FCE would be helpful to ascertain the Petitioner’s restrictions, but deferred to Dr. Maciolek about the injuries to the Petitioner’s cervical spine. (PX4, pg. 284)

On May 26, 2023, the Petitioner had his last therapy appointment for his left shoulder and chest wall injuries. (PX4, pg. 290) The Petitioner reported that he continued to wait for approval from work comp to cover his lower back physical therapy. (PX4, pg. 290) Soreness and discomfort was noted during these exercises, and mobility limitations were also noted. (PX4, pg. 290)

On June 28, 2023, the Petitioner had a follow-up evaluation with Dr. Maciolek regarding his neck and his lower back. (PX4, pg. 292) The Petitioner reported improving neck pain, but increasing lower back pain which radiated into his left lower extremity. (PX4, pg. 292) Dr. Maciolek’s notes indicate this condition is related to the subject work injury. (PX4, pg. 292) Dr. Maciolek recommended a lumbar epidural steroid injection. (PX4, pg. 292)

On August 17, 2023, per the Respondent’s request, the Petitioner attended an Section 12 medical examination with Dr. Kern Singh. (T28-29) The Petitioner testified that he saw Dr. Singh for less than two minutes during this examination. (T29) Following this examination, the Respondent did not approve any related medical treatment for the Petitioner’s lower back injury. (RX1)

The Petitioner returned to see Dr. Maciolek on September 13, 2023 to follow up after the independent medical examination. (PX4, pg. 350) At this visit, Dr. Maciolek continued to recommend the lumbar epidural steroid injection. (PX4, pg. 350) Dr. Maciolek also recommended continued physical therapy for the Petitioner’s cervical spine and lumbar spine, and continued to restrict the Petitioner from full duty work. (PX4, pg. 350)

The Petitioner underwent a lumbar epidural steroid injection performed by Dr. Brian Curtain on September 29, 2023. (PX4, pg. 294) On October 10, 2023, the Petitioner initiated the recommended course of physical therapy for his lower back. (T29-30) (PX4, pg. 299) He returned to see Dr. Maciolek on November 8, 2023 to discuss his progress. (PX4, pg. 314) Given the persistence of the lower back symptoms, Dr. Maciolek recommended an updated MRI and continued to restrict him from work. (PX4, pg. 314)

On November 14, 2023, the Petitioner underwent another MRI of his lumbar spine, with the findings noted as being unchanged from the prior test. (PX4, pgs. 155-156) He returned to see Dr. Maciolek on January 24, 2024. (PX4, pg. 317) At this visit, Dr. Maciolek recommended an L5-S1 lumbar decompression and fusion surgery. (PX4, pg. 317)

On May 20, 2024, the Petitioner underwent an anterior lumbar interbody fusion at L5-S1 with structural allograft interbody spacer, L5-S1 laminectomy partial, bilateral medial facetectomy and foraminotomy, posterior spinal fusion at L5-S1, and application of instrumentation at L5-S1 (PX7, pgs. 42-46).

On June 26, 2024, the Petitioner returned to see Dr. Maciolek for a recheck following surgery. (PX4, pg. 399) He reported improvement in the radicular symptoms following the surgery. (PX4, pg. 350) Dr. Maciolek recommended a course of post-operative physical therapy, and continued to restrict the Petitioner from work. (PX4, pg. 399)

On August 16, 2024, the Petitioner returned to the spine team and was evaluated by Dr. Maciolek's assistant. (PX4, pg. 416) He reported continued improvement with therapy, and was instructed to follow-up in another six weeks for a reevaluation. (PX4, pg. 416)

On September 25, 2024, the Petitioner returned to see Dr. Maciolek for a recheck. (PX4, pg. 438) The Petitioner reported that he was doing well, but he continued to suffer from tension in his right leg, as well as persistent discomfort in his right upper extremity. (PX4, pg. 438) He was recommended to continue physical therapy and was restricted from work. (PX4, pg. 438)

To date, the Petitioner continues to attend physical therapy twice per week which just focuses on his back. (T31) To date, none of the Petitioner's treating medical providers have ever released him to return to full and unrestricted work since the accident. (T31-32)

Petitioner testified that prior to the subject incident, he was doing great from a physical standpoint. (T8-9) Prior to the subject work accident, he had never been to a chiropractor before, and he had never been recommended to undergo any formal physical therapies, injections, or surgeries for any lower back condition. (T9)

TESTIMONY OF DR. LAWRENCE MACIOLEK

Dr. Maciolek testified via evidence deposition on June 12, 2024. (PX8) Dr. Maciolek is a board-certified orthopedic surgeon whose practice focuses on the spine. He performs approximately four or five spinal surgeries every week. (PX8, pg. 7-8)

Dr. Maciolek testified that during his initial physical examination, the Petitioner presented in a sling for the clavicle fracture and a brace for the cervical collar. (PX8, pg. 15) This resulted in the exam being limited given that he could not perform the normal examination techniques when he knew there to be a fracture. (PX8, pg. 15) Dr. Maciolek also performed what he referred to as a "focused exam," which means that they only examine and treat the specific condition that is being treated. (PX8, pg. 50)

Dr. Maciolek testified based upon a reasonable degree of medical certainty that the Petitioner's work accident was a causative factor in his lumbar spine condition which required surgery. (PX8, pg. 25) Dr. Maciolek acknowledged the delay in the Petitioner's reporting of lower back symptoms to his spine clinic, but he explained that he sees this situation unfold quite often in cases of polytrauma, and there is legitimate structural pathology that correlates with the symptoms, and the reporting of it is consistent. (PX8, pg. 25) Dr. Maciolek explained that the Petitioner's multiple fractures overshadowed or masked his back complaints, and then over time as the fractures healed, the other symptoms which had been less severe in nature become more obvious and impactful to that patient. (PX8, pg. 27) Dr. Maciolek testified that the rollover car accident was a competent mechanism of injury to cause an aggravation of the Petitioner's underlying degenerative condition which required medical treatment. (PX8, pgs. 28-29)

Dr. Maciolek also testified that the Petitioner's conditions of ill-being in his cervical spine were causally related to the subject work accident. (PX8, pg. 30) He testified that all the medical treatment he has provided and prescribed has been reasonable and necessary, and causally related to the subject work accident. (PX8, pg. 30)

TESTIMONY OF DR. KERN SINGH

Dr. Singh testified via evidence deposition on September 19, 2024. (RX1) Dr. Singh is a board-certified orthopedic surgeon who practices medicine at Midwest Orthopaedics at Rush, and performs between 500-600 spinal surgeries per year. (RX1, pg. 6) He also performs approximately six independent medical examinations per week. (RX1, pgs. 21-22)

Dr. Singh testified that the diagnostic imaging of the Petitioner's lumbar spine revealed only degenerative changes consistent with the natural aging process. (RX1, pg. 14) He testified that the Petitioner only suffered a soft tissue strain in his lower back as a result of the subject incident, and that Petitioner was at maximum medical improvement related to his spinal injuries at the time of his examination. (RX1, pg. 16) Dr. Singh testified that the Petitioner's report to him of experiencing the immediate onset of lower back pain was not corroborated by the initial medical records, and that was a significant factor in his opinion regarding causation. (RX1, pgs. 15, 18-19) Dr. Singh testified that the subject work accident was a competent mechanism of injury to cause an aggravation of the degenerative conditions he identified in the Petitioner's lumbar spine. (RX1, pg. 20)

CONCLUSIONS OF LAW

With respect to the following issue:

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

The Arbitrator finds as follows:

Based upon the greater weight of the evidence, the Arbitrator finds that the Petitioner's current conditions of ill-being, including the condition of his lumbar spine, are causally related to the work accident of June 29, 2022.

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(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 (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 (1989). Furthermore, it has long been held that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id.* at 64.

In the instant case, the evidence shows that Petitioner's condition of ill-being in his lumbar spine is degenerative in nature so the question is whether his work accident caused an aggravation of the degenerative condition so to become a causative factor in the Petitioner's condition of ill-being. The Arbitrator finds Petitioner has proven by the preponderance of the evidence that his current low back condition is causally related to his work injury of June 29, 2022, as set forth more fully below.

The Arbitrator finds the opinions of the Petitioner's treating surgeon, Dr. Maciolek, to be more credible and persuasive than the opinions of Dr. Singh. Although Dr. Singh conceded that the Petitioner's accident was a competent mechanism of injury to cause an aggravation of the Petitioner's preexisting conditions in his lumbar spine, he opined that the Petitioner only suffered a soft tissue injury to his lower back at least in part based upon what he described as a lack of any evidence in the medical records that the Petitioner suffered the immediate onset of lower back pain following the accident. However, this opinion is not supported by the medical evidence in the record. The evidence in the record documents that the Petitioner immediately, consistently, and repeatedly complained of lower back pain to his medical providers from the first moments after his accident through the date of his initial evaluation with Aspen Orthopedics.

The ambulance report and the emergency room records from the date of accident document complaints of lower back pain by the Petitioner. (PX1, pg. 4; PX 2, pg. 4). The Petitioner's medical records from his primary care physician, Dr. Stolp, document complaints of lower back pain on July 19, 2022 at one of his very first medical appointments following up from the emergency room. (PX 3, pgs. 15-16) Further, during the Petitioner's initial intake with Aspen Orthopedics on July 20, 2022, sharp pain across his lower back during the intake process was documented. (PX.4, pg. 14) (T14-15) For this Arbitrator, Dr. Singh's opinions were based upon facts which are not supported by the evidence, and therefore lack credibility.

Dr. Maciolek testified credibly and persuasively regarding the Petitioner's polytrauma, and explained how his other significant injuries served to mask the pain which the Petitioner experienced in his lower back, resulting in a delay in seeking medical treatment for his back notwithstanding the initial documented complaints of pain. The seriousness of the Petitioner's

injuries from this accident, including multiple fractures across various parts of his body, and the pain resulting therefrom is a reasonable conclusion to draw from the medical records. The greater weight of the evidence supports the conclusion that the Petitioner's polytrauma contributed to the overall delay in the Petitioner seeking specific medical treatment directly related to his lower back condition while other issues were addressed.

Additionally, the Arbitrator finds the testimony of the Petitioner regarding the timing of his lower back complaints to be credible and persuasive. Petitioner's testimony is corroborated by the medical records. The Petitioner testified that during the first several months following the accident, he was taking significant amounts of narcotic pain medication, and he rarely left his reclining chair. He was also wearing a neck brace, a shoulder sling, and a body wrap, and he was medically restricted from just about all physical activities. It was not until he attempted to wean off his medications and began increasing his physical activities that he noticed increasing lower back pain. The Arbitrator finds the January 13, 2023 visit with Dr. Jeff Kleiner noteworthy given that Petitioner reported experiencing back pain during physical therapy with a radicular component, but that his ongoing neck pain remained his main concern. (PX4, pg. 80) This history is corroborated by the Petitioner's testimony, and is consistent with the testimony and opinions of Dr. Maciolek that the Petitioner's current condition of ill-being in his lumbar spine is causally connected to the subject accident.

The Arbitrator does not find the inconsistencies in the medical records that Respondent complains of to merit a finding in Respondent's favor. The Petitioner's testimony was credible and is corroborated by the records. Petitioners can be imperfect historians.

It is well-settled that employers take their employees as they find them, and 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. *Sisbro, Inc. v. Industrial Comm*, 207 Ill. 2d 193, 205 (2003). Based upon the foregoing, the credible testimony of the Petitioner, the medical notes, records, sworn testimony of Dr. Maciolek, and the evidence in the record as a whole, the Arbitrator finds that the Petitioner's current conditions of ill-being, including but not limited to his lumbar spine injury, are causally connected to the work accident of June 29, 2022.

With respect to the following issues:

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?

The Arbitrator finds as follows:

Dr. Maciolek opined that surgical procedure which was performed was directly related to the subject accident, and was medically reasonable and necessary to cure or relieve the effects of the accidental injury. The Arbitrator finds Petitioner proved by the preponderance of the evidence

that the medical treatment rendered was reasonable and necessary to cure and alleviate Petitioner's condition. Given the Arbitrator's finding regarding causal connection, and based upon the evidence, the Arbitrator finds that the medical services provided to Petitioner were reasonable and necessary, and further finds that Respondent shall pay for such medical expenses as itemized in paragraph 7 of Arbitrator's Exhibit 1, as well as future medical care as prescribed by his treating medical providers pursuant to §§8(a) and 8.2 of the Act.

With respect to the following issue:

K. What temporary benefits are in dispute?

The Arbitrator finds as follows:

The medical evidence, testimony of Dr. Maciolek, and the Petitioner's testimony demonstrate that the Petitioner was under doctors' care, and temporarily disabled from working with no accommodation offered by Respondent from June 30, 2022 through the date of hearing on October 22, 2024. Petitioner was restricted from performing his regular job duties for the Respondent during that period. Given the Arbitrator's finding regarding casual connection, and based upon the evidence in the record, the Arbitrator finds that Petitioner has established that he is entitled to payment of temporary total disability benefits of 120 6/7 weeks at a rate of \$996.90 per week, which represents June 30, 2022 through the date of hearing on October 10, 2024. The Respondent shall be given a credit of \$58,268.59 for benefits previously paid from June 30, 2022 through August 17, 2023.