

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC013943
Case Name	Kurt Norville v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0365
Number of Pages of Decision	25
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 9/2/2025

/s/Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)

) SS.

COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KURT NORVILLE,

Petitioner,

vs,

No. 23WC013943

STATE OF ILLINOIS – GRAHAM
CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission corrects scrivener's errors beginning in the Findings section, the date May 15, 2022, is corrected, striking "2022" and replacing it with "2023". Similarly, on page 3 in the Background section, the date May 15, 2022, is corrected, striking "2022" and replacing it with "2023". On page 3 in the first sentence of the Petitioner's Testimony section, the date May 15, 2022, is corrected, striking "2022" and replacing it with "2023". In the second sentence of that section the date "November 1, 2022", is corrected, replacing it with "November 1, 2023". On page 9, in the final paragraph of Issue C, the date May 15, 2022, is corrected, striking "2022" and replacing it with "2023".

Further, the Petitioner's age is corrected in the Findings. The age 59 is stricken, and replaced with 60. Similarly, in the first sentence of the Petitioner's Testimony section, the phrase "59-year-old" is stricken and replaced with "60-year-old". Finally, on page 10, the age used in factor (iii) is corrected, striking 59 and replacing it with 60.

The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 6, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all medical charges related to this claim, for Petitioner's reasonable and necessary medical treatment, as outlined in Petitioner's Exhibit 1. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay

Petitioner permanent partial disability benefits of \$937.11/week for 71.2 weeks, because the injuries sustained caused the 10% loss of use of the left hand, 7.5 % loss of use of the left arm, 7.5% loss of use of the right hand, and 7.5% loss of use of the right arm, as provided in §8(e) of the Act.

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

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.

September 2, 2025

O: 07/01/25

AHS/ps

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

DISSENT

I respectfully dissent from the opinion of the majority and would reverse the Decision of the Arbitrator. I view the evidence differently and would find that Petitioner failed to prove his bilateral carpal tunnel, cubital tunnel or Guyon's tunnel syndromes were causally related to his employment activities. Although Petitioner was working for Respondent for 20 years, after approximately ten years as a correctional officer, ("CO") Petitioner worked for the last 10 years as a food supervisor in the dietary department. (T. 13) Petitioner's job duties varied. Petitioner failed to present, however, sufficient detailed information regarding the frequency with which he used his hands. Petitioner's treating surgeon, Dr. Bradley, did not possess an adequate knowledge of Petitioner's employment activities to render a credible causation opinion. Although Dr. Bradley testified that a combination of repetitive and forceful activity must be present to cause a repetitive trauma, he provided little more than job descriptions, not activity descriptions when describing the types of activities Petitioner performed with his hands and almost nothing related to the kinds of forceful activity that would cause repetitive trauma. Furthermore, the early treatment records documented Petitioner's comorbidities, i.e. age, hypertension and the medications he takes for it, obesity, and sleep apnea, conditions either or both Dr. Bradley and Dr. Crandall opined are risk factors for developing his carpal, cubital and Guyan's tunnel syndromes. (PX3; T. 104)

In the case at bar, Petitioner is relying upon a repetitive trauma theory rather than one of traumatic injury, although his companion case was of a traumatic injury arising out of the same date of accident. A claimant seeking compensation under a repetitive trauma theory "must prove that his physical structure gave way under the repetitive stresses of his usual work tasks." *Darling vs. Industrial Comm'n*, 176 Ill. App. 3d 186, 192 (1988). "The overarching question presented is

whether the employment activity was “repeated sufficiently to cause the injury.” *Edward Hines Precision Components v. Industrial Comm’n*, 356 Ill. App. 3d 186 (2005). “As the appellate court correctly stated, an employee who alleges injury based on repetitive trauma must still meet the same standard of proof as other claimants alleging an accidental injury. There must be a showing that the injury is work related and not the result of a normal degenerative aging process.” *Peoria County Belwood Nursing Home v. Industrial Comm’n*, 115 Ill. 2d 524, 530, 1987.

Petitioner did not testify or submit medical evidence that he had any symptoms with his hands or upper extremities during the period he worked before becoming a CO despite testifying his employment in a factory was “very hand intensive job.” (T. 12) The majority points out that during his tenure as a Correctional Officer, Petitioner testified to various duties that required locking and unlocking doors. *Id.* However, Petitioner testified that it was not until Covid, which was in 2020, his hands would get numb from increased work. Even then, however, the testimony regarding having increased symptoms from Covid is unsupported by the record. Petitioner testified that he had numbness, a loss of feeling in the hands and then he came to see his attorney, who sent him to Dr. Bradley, (T. 17) which occurred in 2022. Petitioner signed his application for adjustment of claim March 30, 2022, which was after the incident with his left hand on or about March 6, 2022, which actually precipitated a consult with his family physician and is the subject of the companion case. (T. 15, PX3)

On March 14, 2022, Petitioner consulted Community Medical Clinic of Pena when he reported complaints of left hand and wrist pain since turning a lock/key on March 6, 2022. He complained of discomfort over the back of his hand and the base of his thumb and wrist with intermittent numbness and tingling to the first three digits. (PX3, 7) He reported his wrist discomfort is proximal to the thumb and radiates up his distal forearm. *Id.* Petitioner’s problem list/past medical history included a ganglion cyst of dorsum of the left wrist, hypertension, obesity and sleep apnea on CPAP. *Id.* At his follow-up visit on March 23, 2023, it was noted that Petitioner still complained of pain and swelling in his left hand after injury that happened turning a lock at work 17 days prior. (PX3, 10) It was also noted on physical exam that his left wrist had mild dorsal swelling, he had “a likely ganglion cyst in this same area” and his BMI was listed as 34.87. *Id.* As for Petitioner’s ultimate diagnosis and treatment, there is no dispute, however, I disagree that Petitioner sustained his burden of proving a causal connection between his employment and his carpal tunnel, cubital tunnel and Guyon’s tunnel syndromes based upon his age, his co-morbidities and the following reasons.

Of special note is Petitioner’s testimony on cross-examination that he used a “great big key” for the warehouse door. He testified that he had to use that 8-10 times per day for a total of maybe or probably two minutes. (T. 34-35) Although he used padlock keys as well, Trevor Wright described it as a padlock you would use at a gym or high school locker room, but a little bit larger size and heavier brass than a standard Master lock. (T. 39)

In repetitive-trauma cases, the claimant “generally relies on medical testimony establishing a causal connection between the work performed and claimant’s disability.” *Nunn v. Industrial Comm’n*, 157 Ill. App. 3d 470, 477 (1987) The causation of compression neuropathy due to repetitive trauma has been deemed to fall in the area requiring such expert testimony. *Johnson v. Industrial Comm’n*, 89 Ill. 2d 438 (1982). In a repetitive trauma claim, a claimant need not

establish that work activities are the sole or even the primary cause of his condition. It must be proven, however that work activities are at least “a” cause of his condition. *Sisbro, Inc. v. Indus. Comm’n (Rodriguez)*, 207 Ill. 2d 193 (2003). In my opinion, Petitioner did not meet his burden of proof based upon the following.

Petitioner’s treating surgeon, Dr. Bradley testified on behalf of Petitioner. Dr. Bradley testified that he is board certified orthopedic surgeon, specializing 50-50 “in arms and legs.” (PX10, 5-6, 67) Dr. Bradley testified that he treats patients for compression neuropathy almost daily. (PX10, 8-9) Dr. Bradley testified that in general, compression neuropathy is a term used to describe any condition that causes pressure on a nerve that results in symptoms, numbness, tingling, burning, weakness. “So, essentially, it’s pressure on a nerve. It can effect (sic) any nerve at any part of the body. The most common are going to be carpal tunnel in the wrist, cubital tunnel at the elbow. I see a lot of tarsal tunnel, which is in the foot and ankle area. I see peroneal neuropathy, which is on the outside of the knee, so really elbows, wrists, knees and ankles.” (PX10, 9)

Dr. Bradley testified that carpal tunnel or cubital tunnel is a condition in which the tunnel narrows, kind of constricting or pushing, putting pressure on the nerve on the inside. It can be caused by many, many different things, but in general, it’s just the tunnel getting tighter and tighter around the nerve. (PX10, 10)

Dr. Bradley testified that the most common kind of non-occupational or non-work factors “would be females of advancing age,” “females typically over fifty, or sometimes over forty, diabetes, thyroid disorder. Recently, a lot of research has been done on sleep apnea. A couple other factors would be smoking, exposure to radiation or chemotherapy. Those would be the big ones we see most commonly.” (PX10, 11) Dr. Bradley testified that there are other more minor contributing non-occupational risk factors “Some people think hypertension, uncontrolled hypertension could potentially be a risk factor. Smoking is kind of t (sic) a major, major one, but more of a kind of a secondary one.” (PX10, 12)

Dr. Bradley testified the biggest occupational risk factors are the utilization of vibratory tools, any kind of conditions that would cause the elbow to be bent and kind of sustained or held in a bent position for a long time, anything that puts force against the elbow when a patient is trying bend it, the elbow is trying to straighten out. *Id.* Anything that would result in kind of repetitive, we call it microtrauma, kind of repetitive hitting along the palm area. “So, you know, we see a lot of this with anybody that kind of utilizes their palms for activities, utilizing tools, hammers, jackhammers, impact wrenches, stuff like that.” (PX10, 12-13)

Dr. Bradley further testified that in the course of his practice he treated Petitioner on “multiple occasions.” (PX10, 13) In addition to relying on records he keeps, Dr. Bradley testified that in preparation for the deposition, he reviewed an EMG nerve conduction study. He was also provided an independent medical evaluation (report authored) by Dr. Crandall that he reviewed. (Px10, 14) He was provided a workers compensation employee notice of injury that he reviewed in addition to the patient registration form, filled out in his own handwriting. *Id.* Dr. Bradley testified that he reviewed Petitioner’s job descriptions and work history timeline that Petitioner also filled out in his own handwriting, included in his registration forms. *Id.* The first date Dr.

Bradley saw Petitioner as a patient was on May 15, 2023. *Id.* (PX10, 14)

Dr. Bradley testified that Petitioner's complaints were that of both right and left arm numbness and tingling. He stated that he had had these symptoms for a long time, many, many years prior to seeing me. (PX10, 15) It was on March 14, 2022, where he was at work in the dietary room and a door had gotten stuck and kind of caused his wrist, his right wrist to kind of get jammed and he had some increasing pain in the wrist. *Id.* So, that had kind of brought to attention some of the numbness and tingling and the pain. By the time he got to me, he states that the wrist pain had improved, but the numbness and tingling in his arms really hadn't. *Id.* So, he was really there to see me for some numbness and tingling in his hand that had been present for a couple years. (PX10, 15-16)

Dr. Bradley testified that Petitioner said the numbness and tingling had been present for years but Petitioner did not give an exact date. (PX10, 16) Dr. Bradley testified that it's kind of hard in these conditions to figure out when you first felt "it." *Id.* However, Petitioner's March 10, 2015, X-ray states as the "Reason for Study: pain in lateral wrist and into first and second digits. Denies any specific injury, just started being painful for last couple of weeks." Further, in the next section "Duration" the reports states, "couple of weeks." Therefore, Petitioner's, and Dr. Bradley's, testimony regarding the onset and duration of symptoms is contradicted by the x-ray report. There is also nothing regarding any earlier complaints or symptoms in any of his family physician's records to substantiate this history other than what Petitioner told Dr. Bradley.

Dr. Bradley then attempted to "thread the needle" by testifying, "[b]ut it kind of really came to his attention in March of 2022 when he kind of jammed his wrist opening this door. (PX10, 16) Dr. Bradley further testified that Petitioner provided that employment history form that he had filled out, and as documented in "my literature, we went over the I guess three different places he had worked in the past and the jobs that he had done there." *Id.* All of this is designed to satisfy Petitioner's theory that his condition, while degenerative, is a result of cumulative repetitive trauma. However, Petitioner's cumulative repetitive trauma theory lacks substantiation anywhere in the medical evidence. While there is no doubt that he performed various activities at work, there is no evidence that Dr. Bradley knew specific details about Petitioner's work history and especially about the work he did in the years leading up to his March 6, 2022, visit other than Petitioner's handwritten reports. The record is silent and absent a single complaint or symptom prior to the alleged "pop" in his hand on March 6, 2022.

Dr. Bradley's understanding of Petitioner's job duties as food supply supervisor, as he "kind of documented in his job description," was that he utilized all the tools for cooking and preparing food. Dr. Bradley testified that Petitioner "would have to, you know, lift up the food, you know, every day, taking the tools down for preparation, putting them back, opening and closing locks, you know. He stated everything there is locked up." *Id.* This recitation of work activities does not substantiate a repetitive trauma claim, or Dr. Bradley's definition of microtrauma, which he described as "kind of repetitive hitting along the palm area. So, you know, we see a lot of this with anybody that kind of utilizes their palms for activities, utilizing tools, hammers, jackhammers, impact wrenches, stuff like that." (PX10, 12-13)

Dr. Bradley also testified that Petitioner would prepare food for approximately 2,000 people per day, then fill out a log sheet of everything he did. “He would have to walk in and out of the coolers multiple, multiple times, opening and closing the cooler doors.” According to Dr. Bradley, Petitioner described oftentimes that was very difficult because the cooler doors would drag on the ground, it would take him both hands to push and pull them, oftentimes having to use his shoulder, or butt, to do it. (PX10, 19) However, again, there are no specifics as to repetitive activities. Doing an activity multiple times might be 5 or 15 total minutes out of a day, and by any standard is not repetitive.

Dr. Bradley’s testimony regarding Petitioner’s work prior to being a food supply supervisor, at the Department of Corrections at Graham as a correctional officer for roughly ten years is, again, not specific. Dr. Bradley testified that the segregation is the unit or the type where “they will oftentimes do bar rapping. Certainly, there are multiple other job duties, but mostly it’s the management of the inmates, cuffing and uncuffing and putting them in and out of their cells.” (PX10, 20) During the correctional officer course of his time, Dr. Bradley testified that he believed Petitioner had pretty much done just about every job that he could there. “He went over a whole bunch of jobs he did.” Dr. Bradley testified that he was not “a hundred percent sure on all the units he was in, but he stated that he pretty much did everything in that prison, or that correctional facility.” *Id.* None of this testimony is specific to describing the amount or frequency of the individual activities in any given day and otherwise amounts to varied duties.

It is firmly established there is no minimum legal requirement that a certain percentage of the workday be spent on repetitive tasks in order to establish the repetitive nature of a claimant’s job duties. *Edward Hines Precision Components v. Industrial Comm’n*, 356 Ill. App. 3d 186, 194, 825 N.E.2d 773 (2005). That being said, while there is no minimum requirement, evidence of the frequency, force, duration, and percentage of the workday devoted to such tasks is certainly relevant. In an unpublished Rule 23 decision, the Appellate Court reaffirmed that quantitative evidence remains relevant in repetitive trauma claims. See *Fisher vs. Ill. Workers’ Comp. Comm’n*, 2017 IL App (4th) 160929WC-U, P20, where the Court indicated that while “[t]here is no requirement that a certain percentage of time be spent on a task in order for the duties to meet a legal definition of ‘repetitive’ . . . ‘claimant needed to present some evidence he engaged [in] repetitive activities.’” Making the point clear, the Court also raised the rhetorical question – “*How many times per day did these activities occur?*” (Emphasis added.) *Id.*

Dr. Bradley testified that he reviewed Dr. Crandall’s independent medical examination report. *Id.* Dr. Bradley testified that he reviewed a 240, 250 job site analysis but none that relates to any particular patient. (PX10, 24) Dr. Bradley testified that he takes that information into account in treating patients. *Id.*

Dr. Bradley testified that the job descriptions provided to him by Petitioner, in addition to the multiple other patients that he had seen from this facility in these jobs, made him think it’s pretty clear that “they repetitively utilize their hands and their elbows, particularly doing stuff like bar rapping, which gives vibratory microtraumas, utilizing Folger Adam keys, and the multiple various different keys, pulling on these cell doors, opening and closing the chuck holes, all those various repetitive activities that they do on a day-to-day basis, and you multiply that by twenty years that he worked there, I think cumulatively shows a significant amount of repetitive usage,

both his hands and his elbows, which I feel, at least in some part, contributed to the development of his disease.” (PX10, 30) Dr. Bradley’s testimony regarding repetitive usage is vague, lacks specificity and relies on generalities including what other patients reported, but not specific to this Petitioner’s duties and frequency thereof.

Dr. Bradley testified that he never had the opportunity to tour Graham Correctional Center. (PX10, 43) Dr. Bradley testified that Dr. Crandall’s report and description of the Graham Correctional Center do not comport with “multiple CO’s” that described “both hands pulling on the door or banging with their wrists.” (PX10, 45-46) Petitioner, however, did not develop symptoms when he worked as a CO.

On cross-examination Dr. Bradley testified when Petitioner first came to him-at the initial evaluation, Petitioner had a form from his attorney that he had handwritten entitled Detailed Job Description dated April 29, 2023, and work history timeline. (PX10, 49) Since Dr. Bradley was referred by Petitioner’s attorney, the job description and work history timeline were prepared in anticipation of litigation.

Dr. Bradley further testified, the work history timeline states currently, from 2003-present, “correctional food supply supervisor.” *Id.* Dr. Bradley could not answer whether or not Petitioner actually did any work outside of the kitchen food service area. *Id.* Further, Dr. Bradley was unsure of what duties of those are done outside of the kitchen, or which of those are located in the kitchen. (PX10, 51) Dr. Bradley admitted that he did not know if Petitioner currently did bar rapping, used Folger Adam keys or utilized chuck holes. *Id.*

Dr. Bradley admitted that he forgot “to ask him how much bar rapping he did or did not do.” (PX10, 52, 53) Dr. Bradley testified he knew from “other clients” that the segregation unit is where it’s mostly done. *Id.* Dr. Bradley testified that he forgot to ask Petitioner directly if he used any Folger Adam keys. (PX10, 53-54) Dr. Bradley testified that Petitioner told him that he utilized chuck holes while he was a dietary supervisor. (PX10, 55) When asked what types of keys Petitioner used as a dietary supervisor, Dr. Bradley could not answer with specificity about the Petitioner’s use of keys, just that it was his “understanding is there is multiple different types of keys that he used.” (PX10, 56)

Dr. Bradley testified that he did not “think that any one job description particularly caused this. I think you look at the twenty years he worked for the Department of Corrections, all those various different jobs he did, they all contributed to it.” (PX10, 57) Dr. Bradley opined “It’s more the amount of force in combination with the repetition and combination with the duration of time that all contributed to it.” (PX10, 58) Dr. Bradley could not describe the force Petitioner used repetitively, however, he testified more to the varied nature of Petitioner’s job and lack of a repetitive activity combined with force when using his hands and elbows:

I can't give you a milligrams of, or pounds of force that were utilized, but as we kind of talked about already, sometimes it's really easy to open and close a lock, or chuck hole, or door, and other times, it requires both hands and a foot pushing or pulling to do it.

As I documented, he said that the freezer doors would drag on the floor, so oftentimes, he was pulling with both hands and having to hit them with his shoulder, or hit them with his butt, to get these things to move.

So, the answer to that question, I think it varies from door-to-door and day-to-day. (PX10, 59)

Dr. Bradley further testified that he did not know the exact number of minutes per day Petitioner had to use keys of any type, but would, “venture to say that it varies depending upon his job duties for that day depending upon his job duties for that day over the twenty years he worked there.” (PX10, 60) While it is evident that Dr. Bradley was trying to establish a “cumulative” trauma picture, he admitted the variances in Petitioner’s daily job duties and that he did not know what those duties were other than generalities. While the Commission is not barred from considering evidence of a claimant’s entire work history, the claimant must sustain his burden of proving he sustained such a work-related, gradual injury. As the Fisher Court queried, “*How many times per day did these activities occur?*” (Emphasis added.) *Fisher vs. Ill. Workers' Comp. Comm'n*, 2017 IL App (4th) 160929WC-U, P20.

Dr. Bradley testified that repetitive trauma to the palm of the hand would cause carpal tunnel and could cause Guyon’s tunnel. (PX10, 62) Dr. Bradley testified that he sees Guyon’s tunnel in workers who lay tile and hardwood floors, and “a lot in my mechanics that utilize impact tools. I see a lot in highway workers that utilize vibratory tools and air tools, doing signs and bridge work and stuff like that, and occasionally from time to time in the correctional officers.” (PX10, 65) However, Dr. Bradley failed to articulate the kinds of activities that combined force with repetitive activity that would make the causal connection between this Petitioner’s specific job duties to development of the conditions he diagnosed in this Petitioner.

Dr. Bradley testified that he was unaware if Petitioner had any significant periods of time that he did not work, for one reason or another. (PX10, 70) Dr. Bradley did not know whether or not Petitioner ever cuffed or uncuffed inmates. *Id.* When asked, Dr. Bradley thought Petitioner was right-hand dominant but then determined Petitioner was left-hand dominant. *Id.* When asked which hand he would have used to utilize keys, Dr. Bradley referenced the fact that “[t]hese guys all tell me they utilize keys in both hands,” not that Petitioner told him that. (PX10, 71) Dr. Bradley then advised when Petitioner injured his wrist that he was utilizing the key in his left hand, wiggling it back and forth with his right hand, “[s]o, on that particular day he had the key in the left hand.” *Id.* Dr. Bradley did not know if Petitioner was a motorcycle rider. (PX10, 72) Finally, Dr. Bradley testified that his causation opinion is based on the information that Mr. Norville provided to him regarding what he does at his job and that he had “forty or fifty of these patients” so “it certainly goes upon Mr. Norville’s documentation to me.” (PX10, 73) Further, Dr. Bradley testified that it was his experience, “all type of things that play into this, but certainly Mr. Norville’s report to me is part of it.” (PX10, 73-74)

Dr. R. Evan Crandall performed an independent medical examination of Petitioner on July 26, 2023, pursuant to Section 12 of the Act. (RX2, 5-6) Dr. Crandall authored a report regarding his findings. (RX2, 6; RX2, DepX2) Per the report, Petitioner reported that he has had symptoms

for 3-5 years.(RX2,DepX2, 37) On the right he reported he drops things, swelling in his hand, numbness and tingling of all of his fingers, night numbness, numbness when he holds his cell phone. He recently underwent surgery on his left hand on July 21, 2023, by Dr. Matthew Bradley.

Dr. Crandall reported that Petitioner could not complete his paperwork that day because he was in a surgical dressing. When his nurse asked Petitioner the questions, he responded to some of them. He had to leave the office several times to make phone calls. He initially refused to answer the question about whether or not he had any medication allergies. He reported he was instructed not to give any medical history and only to talk about his work. He did then report he was allergic to amoxicillin. His medication list was taken from the office note of Dr. Bradley and Petitioner confirmed the medications. Petitioner refused to tell Dr. Crandall how he was referred to Dr. Bradley who is 115-miles from his home. *Id.*

Dr. Crandall reported Petitioner is left-handed. He denied smoking, diabetes, thyroid disease, arthritis, or bleeding disorders but has high blood pressure. He takes Aspirin, Metoprolol, Rosuvastatin, Losartan, Omeprazole. He had neck and lower back surgery in 2000 after a motor vehicle accident. He reports a section of his neck and lower spine were removed. Petitioner self-reported that his vital were 5' 11" and he weighs 242-pounds for a body mass index of 33.7. *Id.*

Petitioner reported that his hobbies are golf and horses. (RX2, DepX2, 38) Petitioner had a 19-year history of employment with the Respondent, 40+ hours per week. He worked 10 years as a Correctional Officer and now works as a Food Service Supervisor. He helps with preparation. He open doors and freezer doors. His symptoms started in dietary. He said he was limited on help during quarantine, and the inmates also worked double shifts. He occasionally assisted in cooking. He said he had to change to using his right hand when he began to get symptoms on the left. He said the doors that he opened are the doors from dietary to dining - the South door - which is a key lock. He opened the front cooler which has a key lock. The outside door to the dock requires him to pull and lock at the same time. Freezer #3 has a key lock. He reports he has broken keys trying to open locks. There is a locksmith at the facility, and they put in work orders for broken locks. He had to sign in 50-60 inmates. He estimated he would open/close locks 100-150 total times in a day. He would also sign in and out tools such as utensils. *Id.*

Dr. Crandall noted that he did not have a copy of Petitioner's nerve conduction study, which would be important to causation as Petitioner has a history of a neck injury which could contribute to or be the cause of his symptoms. (RX2, DepX2, 39) Dr. Crandall reported reviewing the Workers' Compensation Employee Notice Injury Report. He also reviewed Dr. Bradley's May 15, 2023, report, the Workers Compensation Medical report of May 23, 2023, and the Petitioner's wage statement from November 30, 2022, to May 15, 2023. (RX2, DepX2, 40)

Dr. Crandall opined in his report he "did not have a copy of the objective nerve conduction study which will be necessary in order to determine a diagnosis." *Id.* Even if the nerve conduction study confirms these diagnoses, he does not believe this is an injury. He does not believe this is an aggravation of a previous condition. He personally visited Graham Correctional and discussed the duties and requirements of the people in the dietary department. Dr. Crandall did not think opening and closing of the doors or locking or unlocking the doors in the dietary area in the amount of 100-150 per day, even if they are hard to operate, is an aggravating factor or causative factor of carpal

tunnel syndrome and/or ulnar neuropathy. Dr. Crandall noted that Dr. Bradley documented at the visit of May 15, 2023, that Petitioner continued to have to perform a lot of keying and repetitive use of his hands. Dr. Crandall testified, "Petitioner did not describe any keying at his visit with me or on the Workers' Compensation Employee's Notice of injury completed on May 19, 2023." *Id.* Dr. Bradley documents Petitioner had to open freezer and cooler doors that were difficult to open and had to "utilize their butts and shoulders to get them to work." *Id.* Dr. Crandall noted that "Mr. Norville did not have complaints about his shoulder or buttocks. Hitting against a door with a shoulder or the buttocks would not cause a neuropathy at the elbow or wrist. At the visit of May 15, 2023, Dr. Bradley documented that Mr. Norville filled out a detailed job description which was scanned into the chart. Dr. Bradley does not reference any details from that description, and a copy was not provided with his office notes." *Id.*

In other pertinent answers to interrogatories, Dr. Crandall opined that he did not believe that Petitioner's work activities caused or contributed to his current diagnosis. (RX2, DepX2, 41) Dr. Crandall opined that the activities do not rise to the levels that cause or contribute to carpal tunnel syndrome. Dr. Crandall wrote that he personally visited Graham Correctional and toured throughout the facility including time in the kitchen and cafeteria. He observed workers performing the tasks and opened/unlocked many of the doors in the facility. He discussed the duties with a major and a kitchen supervisor. In his opinion, the physical activities performed described by Mr. Norville is not a causative factor or aggravating factor of potential neuropathy conditions. *Id.*

Dr. Crandall also opined that if it can be determined Petitioner actually has median and/or ulnar neuropathy, it would be a result of his personal medical conditions which include age, hypertension and the medicines required to treat his hypertension. These are well-known risk factors for causing carpal tunnel syndrome and ulnar neuropathy. *Id.*

Dr. Crandall does not believe his level of exposure to opening and closing locks and opening and closing doors aggravated his possible pre-existing condition of carpal tunnel syndrome and/or ulnar neuropathy. *Id.*

Dr. Crandall testified regarding his independent medical evaluation and the report of his findings on December 12, 2023. (RX2). Dr. Crandall testified that he is a plastic surgeon, licensed in Missouri, and board certified in plastic surgery with American Board of Plastic Surgery Hand Certification. (RX2, 4; RX2, DepX1) Dr. Crandall testified that he specializes in upper extremity surgery, about 80 patients a week, 200 to 300 operations a year. He performs about 100 independent medical evaluations a year and 95 percent of his income and time is spent on treating patients. (RX2, 5) At the time he was seen by Dr. Crandall, Petitioner had undergone surgery on his dominant left hand and arm on July 21, 2023. Dr. Crandall testified that he also reviewed Petitioner's employment records. (RX2, 9)

Dr. Crandall did not review the NCV studies in writing his report but reviewed them in advance of testimony (RX2, 9-10)

Dr. Crandall testified that his diagnosis, based on the records, the exam, and the history, was of right and left carpal tunnel syndrome and right and left cubital tunnel syndrome. (RX2, 11)

Dr. Crandall testified that his diagnosis was not related to Petitioner's alleged workplace activities. Dr. Crandall based his opinion on his 40 years of experience of evaluating and treating upper extremity patients and operating on them, which includes over ten thousand times to determine causation. He also based his opinion on his knowledge of the literature for medical causes, and activity causes, of carpal tunnel syndrome. His experience at interviewing other people in the same institution, and his recent job site visit of looking at the activities of the prison guards at the Graham prison facility. (RX2, 12)

Dr. Crandall's understanding of the Petitioner's job duties was that "he is employed by the Illinois Department of Corrections. And he supervises the production and distribution of the food. So he supervises the inmates who make the food and distribute the food. He is not a cook. He is not the producer of the food. He tells the other people what to do. It's mostly a standing position, and supervisor position." *Id.* Dr. Crandall set the workplace causation standard for carpal and cubital tunnel syndrome as four hours of continuous hand movement against resistance per day. This was based upon literature, ergonomic standards, and suggestions by governmental agencies. (RX2, 13)

Dr. Crandall testified that he understood that Petitioner had spent ten years as a prison guard, followed by ten years in the dietary, supervising inmates who make the food. (RX2, 14) Dr. Crandall understood that during COVID inmates had to work double shifts, but that it had no impact on Petitioner's duties. Petitioner was in food service the entire time. (RX2, 14-15) Dr. Crandall did not think that would have anything to do with his supervision, because there is nothing intensive about supervising. (RX2, 15)

Dr. Crandall did not think Petitioner's job duties in his past employment as a correctional officer had anything to do with his condition. (RX2, 20) The farthest he looks at someone's job duties to see if they are a contributing factor is two years which he characterized as a "statute of limitations." *Id.* In Dr. Crandall's opinion, if the person didn't have the problem at the time they were doing the job, it's unlikely that the effects of that job could travel forward in time. So, he goes back two years, or he usually goes back to the time that the person filed the claim. *Id.* Dr. Crandall testified that past employment, past two years, is not relevant in determining causation. *Id.* He explained that all Petitioner's employment was in food service. According to Petitioner, he thought he had symptoms three to five years, which is well past his activities as a correctional officer, or what is commonly called a prison guard. (RX2, 20-21)

He also testified that on a case specific basis the prior employment might be relevant if the nerve conduction studies, and medical records shows the person just did not get the treatment and just waited. (RX2, 21) Dr. Crandall explained consideration of past of employment past two years has to be case specific, "and it's based upon information you have. Because there are a lot of people who just sit on this for five to ten years, and if you had documentation, for example the person had it and then just didn't do it, and then four employers later got treatment, then people would argue, who started it? So you have to take each case specifically and analyze it." *Id.*

In my opinion, what Dr. Crandall described is that consideration of cumulative employment history is dependent on how long the Petitioner complained of symptoms or had

symptoms and the past employment becomes more relevant. If there was an indication of past complaints or even vague symptoms, for ten years, then the employment becomes more relevant. Dr. Crandall testified Petitioner said he had symptoms for three to five years and Petitioner was employed as a food service supervisor, and he had been in that position for the last ten years. (RX2, 21-22) Dr. Crandall testified that he was on record and under oath as saying that repetitive trauma cases are cumulative in nature. (RX2, 23-24) This proves he was not ignoring Illinois case law but enunciating what he perceives is a case-by-case basis for looking at past employment. Petitioner told Dr. Crandall that during Covid the inmates had to work double shifts, but he worked 40 hours a week, so his job duties did not change. That statement does not comport with Petitioner's testimony at trial, but Dr. Crandall opined that even if the food service supervisors were short staffed it would not make any difference. (RX2, 24)

Dr. Crandall testified to visiting the site of employment with representatives from the insurance company and from the Attorney General's office. He testified to having opened locks and doors, including doors to get in the food service area. They had rooms that they had to lock and freezers. Dr. Crandall "tried to unlock and lock everything I could see." Dr. Crandall testified he would estimate opening between six to ten total items, unlike the entire cell block like he did the previous hour. (RX2, 25) Thus, Dr. Crandall was familiar with the food service area. Even if the locks were opened with frequency the total amount of time may only amount to minutes out of each day.

I find Dr. Crandell's causal connection opinion more persuasive than Dr. Bradley's opinion for several reasons. Dr. Bradley testified that cubital tunnel is caused by doing an activity that that would cause the elbow to be bent and kind of sustained or held in a bent position for a long time, anything that puts force against the elbow when a patient is trying bend it, the elbow is trying to straighten out. (PX10, 12) Anything that would result in kind of repetitive, we call it microtrauma, kind of repetitive hitting along the palm area. "So, you know, we see a lot of this with anybody that kind of utilizes their palms for activities, utilizing tools, hammers, jackhammers, impact wrenches, stuff like that." (PX10, 12-13) Yet Dr. Bradley testified to Petitioner's repetitive but not forceful activities, failing to explain what Petitioner did in any specific way. Further, Dr. Crandell toured the Graham Correctional Center and viewed the kitchen area where Petitioner was a supervisor and he locked and unlocked doors in the kitchen area and an entire cell block, describing that he "tried to unlock and lock everything I could see." (RX2, 25) Dr. Bradley never toured the Graham Correctional Center. (PX10, 43)

At the time of hearing, Petitioner testified as to a number of activities performed in his various duties over the years working for Respondent. (T.14-19, 21-22) Trevor Wright testified as to the quarantine of inmates and increase in staff duties at Graham during Covid. (T. 38) Neither, however, testified as to the combined force and repetition required in the performance of said duties, nor did Dr. Bradley describe the causation mechanism. There was no testimony or demonstration at the time of hearing as to the exact mechanism of the duties which would help to determine whether Petitioner's job duties possessed the requisite force combined with repetitive motion that demonstrated forceful movements on a repetitive basis. There was no testimony or demonstration of the required flexion and extension of the wrist and arms that would put Petitioner at an increased risk for compression neuropathies. Petitioner's exhibits

eight and nine fall short in this endeavor as well, describing various duties, not repetitive forceful movements. After reviewing the entire record, I would find Dr. Crandell's opinions more persuasive than Dr. Bradley's and I would find Petitioner failed to sustain his burden of proving accident and causal connection between his work activities and his conditions of carpal and cubital tunnel and Guyan's tunnel syndromes. Therefore, I respectfully dissent from the majority opinion.

/s/ Kathryn A. Doerries
Kathryn A. Doerries

September 2, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC013943
Case Name	Kurt Norville v. State of Illinois - Graham Correctional Center
Consolidated Cases	23WC013940;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 6/6/2024

/s/ Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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



June 6, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
 COUNTY OF SANGAMON)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

KURT NORVILLE

Employee/Petitioner

v.

STATE OF ILLINOIS/GRAHAM CORR. CTR.,

Employer/Respondent

Case # **23** WC **013943**

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 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 **May 15, 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 **\$94,448.76**; the average weekly wage was **\$1,816.32**.

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

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

Respondent *has 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 **\$0.00**.

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

ORDER

Respondent shall pay all medical charges related to this claim, for Petitioner's reasonable and necessary medical treatment, as outlined in Petitioner's Exhibit 1. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Respondent shall pay Petitioner permanent partial disability benefits of **\$937.11/week** for **71.2** weeks, because the injuries sustained caused the **10% loss of use of the left hand, 7.5 % loss of use of the left arm, 7.5% loss of use of the right hand, and 7.5% loss of use of the right arm**, as provided in § 8(e) of the Act.

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

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



Signature of Arbitrator

June 6, 2024

FINDINGS OF FACT

Background

Petitioner filed two Applications for Adjustment of Claim alleging both traumatic and repetitive injuries in the course of his employment with Respondent. Petitioner alleged in the first application for adjustment of claim (application), 23WC013940, that on March 6, 2022, he injured his left wrist while turning a key to lock a door. (AX3) In his second application, 23WC013943, he alleged that he suffered injuries to his bilateral hands, bilateral arms, bilateral shoulders, and body as a whole as a result of repetitive job duties, which manifested on May 15, 2022. (AX4) For his first traumatic accident, Respondent disputes accident, causal connection, liability for medical expenses, and the nature and extent of the injuries (AX1) For his second repetitive accident, Respondent disputes accident, causal connection, liability for medical expenses, and the nature and extent of the injuries. (AX2)

Petitioner's Testimony

On May 15, 2022, Petitioner was a 59-year-old Food Supply Supervisor for Respondent. (AX1; T.13) Prior to his retirement on November 1, 2022, he had worked for the Department of Corrections for 20 years. (T.12, 18) For the first ten years of his time employed by Respondent, he worked as a Correctional Officer. (T.13) He then became a Food Supply Supervisor. (T.13) Prior to his employment by Respondent, he ran a printing press at a factory for 19 years. (T.12) Petitioner completed a detailed job description/work history timeline, in which he detailed his job activities for Respondent. (PX9)

During his tenure as a Correctional Officer, Petitioner testified that he worked in the receiving unit of the X-House, segregation, healthcare, and all of the housing units. (PX9) He wrote, "Every position required of locking and unlocking doors that are very hard to turn keys in locks." *Id.*

With respect to his Petitioner's handwritten job description notes that he has to open multiple cabinets, remove and carry tools for the preparation of food for 2,000 people, and log each tool removal and replacement. (PX9) He also had to open and close heavy freezer doors. *Id.* He described these doors as difficult to open on many occasions, requiring both of his hands to open them, or pushing them with his shoulder to close. *Id.* He testified that he repeatedly locked and unlocked doors throughout the day:

"My job requires and demands the use of hands daily I lock and unlock doors all day long, cooler freezer doors(,) closet doors(,) pass threw (sic) doors(,) doors to enter and exit dietary outside cage. I have to open locks many times that are very hard to open and opening cooler doors that are very old all the doors with locks are so old and patched up so many times that they are very hard to open and close also unlock and lock up." *Id.*

He estimated that his logging of the approximately 169 tools that change hands multiple times daily and charting of food inventories and meal planners resulted in about 45 to 60 minutes of writing alone. *Id.*

Petitioner testified that the facility was already short-staffed, but staffing was reduced even further during the COVID-19 pandemic due to reduction in the inmate workers. (T.15-16) While he ordinarily had the assistance of approximately 75 workers, it was reduced to less than half that amount. (T.15-16) He stated that he had to work double shifts and was "putting products away three times a week with big semi loads, washing dishes, making, helping make meals, opening cans of products for the meals . . . pulling the trays out, preparing the trays, bring them back in". (T.16) He stated that these extra duties during lockdown caused an increase in his symptoms.

(T.16-17) When asked on cross-examination how many times he would have to unlock or lock items during the day, he testified:

All day long. I mean it's a continuous job there opening doors, unlocking locks, writing inmates in and out, inventory. It's just a nonstop - nonstop. And then having less workers it was humongous work on us. (T.34-35)

Petitioner testified that all of the freezer doors were hard to key open. (T.27) He testified that he ultimately used both hands to do his job duties, because when his left handed symptoms escalated, he began using his right hand more. (T.28) Petitioner does not suffer from gout, hypothyroidism, diabetes, or rheumatoid arthritis, but acknowledged that he suffers from hypertension and sleep apnea. (T.18, 32)

Petitioner testified that during his care and treatment, he used personal time and was not asking for an award of TTD benefits during his time off work to avoid repayment complications. (T.20)

Testimony of Major Trevor Wright

Major Wright was present on Respondent's behalf, but called to testify by Petitioner. (T.36) He testified that there were no inaccuracies in Petitioner's testimony. (T.37) He also confirmed that Respondent's facility is currently short-staffed by approximately 70 correctional officers. (T.37)

On cross-examination, he testified that the locks used in dietary were larger than typical Master locks and were made of heavier brass. (T.39) He also acknowledged that the keys are larger and, given that the locks are 40 years old, many were hard to open. (T.40)

Medical Treatment

Petitioner presented to the office of Dr. Matthew Bradley on May 15, 2023, with complaints of bilateral upper extremity numbness, tingling, and burning. (PX4) Petitioner reported years of increasing symptoms in his bilateral upper extremities, but he also described that in March of 2022, he injured his left wrist while trying to turn a key in a notoriously difficult door in the south of the dietary room. *Id.* While Petitioner's pain in his wrist improved, he continued to have numbness and tingling in his hand, multiple periods of cramping and burning in his hand during the day, and symptomatic episodes that awaken him during the night. *Id.* Dr. Bradley further noted that Petitioner has been working for Graham Correctional Center for approximately 19 years, 10 of which he spent as a Correctional Officer and the remainder in the food service department as a dietary supervisor. *Id.* He noted that Petitioner has done a lot of repetitive keying and opening of difficult doors in both positions and did not have any hobbies that contributed to his symptoms. *Id.* A detailed job description was filled out and scanned into Dr. Bradley's chart. *Id.*

Dr. Bradley's examination revealed positive Tinel's over the bilateral elbows with tingling over the ulnar nerve distribution, positive Tinel's and Phalen's over the bilateral wrists with decreased sensation over the ulnar nerve distribution, and positive Tinel's bilateral wrists over Guyon's canal. *Id.* X-rays were negative for fracture or significant degenerative changes. *Id.* Petitioner was sent for EMG studies, which were conducted the same day and showed objective evidence of moderate-to-severe bilateral carpal tunnel syndrome, bilateral moderate-to-severe Guyon's canal syndrome, and bilateral mild-to-moderate cubital tunnel syndrome. (PX5) Dr. Bradley reviewed the results and noted in his assessment that Petitioner suffered from bilateral left-greater-than-right neuropathy across his upper extremities. (PX4) Petitioner is left-hand dominant. (PX10, p.70) Dr. Bradley recommended conservative care despite reservation regarding the success of same given the severity of

Petitioner's conditions. (PX4) He prescribed anti-inflammatory medication, home exercise, and bracing/immobilization of the wrists during the day and elbows at night to provide support and prevent hyperflexion. *Id.* He opined that if the information provided to him was accurate, that Petitioner's employment with the Illinois Department of Corrections over the last 19 years was a contributing factor to Petitioner's condition of ill-being in his bilateral upper extremities. *Id.*

Petitioner returned to Dr. Bradley on July 3, 2023, with no improvement in his symptoms despite conservative care, and physical examination remained unchanged. (PX4) As Petitioner failed conservative care, Dr. Bradley recommended surgical decompression. *Id.*

On July 21, 2023, after obtaining preoperative clearance from Petitioner's family physician, Dr. Bradley performed open left cubital tunnel release, open left carpal tunnel release, and open left Guyon's tunnel release. (PX3; PX6) Objective intraoperative findings revealed a significant amount of chronic inflammatory soft tissues and some adhesions about the ulnar nerve, a thickened appearance of the transverse carpal ligament with flattening of the median nerve, and a significant amount of thickening and scar-type soft tissue over the nerve throughout the entire length of the Guyon's tunnel. *Id.* During the follow-up visit on August 3, 2023, Petitioner reported that his left upper extremity was doing remarkably well, notwithstanding some residual tingling at the tips of his index and long finger. (PX4) Petitioner was advised to continue his home exercise program and was allowed to return to work until his second operation. *Id.*

On August 25, 2023, Dr. Bradley performed a right open cubital tunnel release and right open carpal tunnel release. (PX6) Dr. Bradley noted in the summary of his findings that the cubital tunnel was "significantly tight" and "caused a significant amount of compression and deformation of the nerve posterior to the medial epicondyle". *Id.* He also observed flattening of the median nerve. *Id.* Petitioner reported during the follow-up visit on September 11, 2023, that his recovery was doing well. (PX4) He was still having some stiffness in his right hand, but it was improving with his home exercise program. *Id.* Dr. Bradley returned Petitioner to work full duty.

Petitioner returned for his final visit with Dr. Bradley on October 12, 2023. (PX4) Petitioner was doing well but had some complaints of tenderness and scar tissue formation around his cubital tunnel incision. *Id.* Dr. Bradley prescribed Diclofenac to reduce the inflammation in the area, noted he could do nothing further that would reliably and predictably improve Petitioner's outcome, and placed Petitioner at maximum medical improvement. *Id.*

Petitioner testified that despite the improvement still has some symptoms that increase with activity. (T.23) He has reduced grip strength and takes over-the-counter Tylenol for pain and soreness. (T.23) His hobby of horseback riding and his ability to do yard work have been affected. (T.23-24)

Dr. Evan Crandall: Section 12 Examination and Testimony

Pursuant to Section 12, Respondent had Petitioner evaluated by Dr. Evan Crandall on July 26, 2023, shortly after Petitioner's left-sided surgery. (RX2, p.37) Dr. Crandall found Petitioner reluctant to answer questions and noted that "he had to leave the office several times to make phone calls". *Id.* Petitioner testified at Arbitration that he left the exam office to use the restroom and check on his guest that he brought with him to the exam. (T.22) Dr. Crandall noted that Petitioner was left-handed and denied diabetes, thyroid disease, arthritis, or bleeding disorders. (RX2, p.37) Petitioner reported having high blood pressure for which he took Metoprolol and Losartan. *Id.* Dr. Crandall noted the history of Petitioner's employment and symptoms, including the difficulty Petitioner had with doors, locks, and keys at the facility, the increase in Petitioner's duties during quarantine, and Petitioner's estimate of opening and closing locks and doors 100 to 150 times in a day. *Id.* Petitioner also reported breaking keys trying to open locks and keeping logs for inmates and tools/utensils. *Id.* at 38.

Petitioner had positive orthopedic signs and tests during examination of his right upper extremity, including positive right ulnar Tinel's sign, positive median Tinel's sign, positive Phalen's test, and positive provocative test, but he did not feel comfortable agreeing with Dr. Bradley's assessment or making his own diagnosis without reviewing "a copy of the objective nerve conduction study". *Id.* at 38-40. He expressed desire to not only review the nerve conduction studies, but also the operative report. *Id.* at 40. However, he stated, "Even if the nerve conduction study confirms these diagnoses, I do not believe this is an injury. I do not believe this is an aggravation of a previous condition." *Id.* He stated that he visited Respondent's facility, "observed workers performing the tasks and opened/unlocked many of the doors in the facility", and discussed the duties and requirements of the people in the dietary department, and he "[did] not think opening and closing of the doors or locking or unlocking the doors in the dietary area in the amount of 100-150 per day, even if they are hard to operate, is an aggravating factor or causative factor of carpal tunnel syndrome and/or ulnar neuropathy". *Id.* He concluded his report by attributing Petitioner's conditions strictly to his comorbid risk factors, and deemed the issue of maximum medical improvement irrelevant as he opined that no injury occurred. *Id.* at 41.

Respondent took the deposition of Dr. Crandall on December 12, 2023, and his testimony on direct examination was consistent the opinions he expressed in his report. (RX2, p.1) Dr. Crandall testified that his review of Petitioner's records was incomplete at the time of his examination, but stated that he was able to obtain the nerve conduction studies he requested the morning of his deposition. *Id.* at 9-10. He believed Petitioner suffered from bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome, and he believed Petitioner's job was "mostly a standing position, and supervisor position". *Id.* at 12, 15. Dr. Crandall testified that he set his own threshold for repetitive injury, to which he testified, "My threshold would be four hours of continuous hand movement against resistance per day." *Id.* at 13.

On cross-examination, Dr. Crandall testified that Petitioner was a surgical candidate for his bilateral upper extremities. *Id.* at 18. Dr. Crandall agreed that repetitive trauma cases are cumulative in nature, but he only considered the two years of Petitioner's job duties prior to date Petitioner first exhibited symptoms. *Id.* at 20-23. Dr. Crandall testified that he did not believe that Petitioner's job duties changed during the pandemic. *Id.* at 22. He was not aware of whether Respondent's dietary department was short-staffed. *Id.* at 23. He acknowledged bringing an assistant with him to his tour of Respondent's facility and stated that he tried to "unlock and lock everything I could see". *Id.* at 24. When asked to estimate how many things he opened, however, he stated, "Maybe six to ten." *Id.* at 24.

Testimony of Dr. Matthew Bradley

Petitioner's treating physician, Dr. Bradley, also testified by way of deposition. (PX10) He testified that he is predominantly a treating physician, but he does do medical-legal evaluations, about one per month on average. *Id.* at 7-8. He treats compression neuropathy daily, and performs surgical releases three or four times a week. *Id.* at 9-10.

Dr. Bradley testified that there are both occupational and non-occupational risk factors for the development of compression neuropathies like carpal and cubital tunnel syndrome. *Id.* at 10-12. He reviewed Petitioner's records and his job history, and although he testified Petitioner had comorbid non-occupational risk factors, he also testified Petitioner's repetitive use of his hands and elbows was an occupational factor that brought about his symptoms of carpal and cubital tunnel. *Id.* at 10-15, 20-21, 31-32. He noted that the he had observed these conditions develop in many staff for the Department of Corrections, including many that have worked in the food service department. *Id.* at 20-22. Based on his review of the totality of the evidence, Dr. Bradley believed that Petitioner's 20 years Petitioner spent working within the Illinois Department of Corrections as both a Correctional

Officer and Food Service Supervisor contributed to the development of his bilateral upper extremity compression neuropathies. *Id.* at 29. When asked the basis of his opinion, he stated that both the description provided to him by Petitioner and his experience treating other staff made it “pretty clear” that they repetitively utilize their hands and elbows. *Id.* at 30. He felt that the job activities Petitioner performed throughout his career with Respondent “at least in some part, contributed to the development of his disease”. *Id.* at 30.

Dr. Bradley testified that he considers activities beyond those that a patient does at the time he or she becomes symptomatic when formulating his causation opinion. *Id.* at 30-31. He explained, “Well, at the time he becomes symptomatic is – it’s just the straw that broke the camel’s back, so to speak. You know, that’s where they finally start feeling the condition. But the condition is actually developing and progressing for years and years before they feel their symptoms. So, I think you have to, to be fair, is you have to look at what they were doing for multiple years before those symptoms developed.” *Id.* at 30-31. He also explained that compression neuropathies are multifactorial. *Id.* at 32. “It’s almost always a combination of, you know, a couple two, three, four different things that lead to these.” *Id.* at 32. He stated, “Almost always that is the case. You know, very rarely do I see, you know, a patient where I say it’s this one particular thing that caused this.” *Id.* at 32.

Dr. Bradley testified that the intraoperative findings supported his findings of repetitive trauma. *Id.* at 34-35. When asked what was significant about his findings, he stated:

“What is most significant is what is not present. What is not present is there wasn’t any tumors, there wasn’t any bone spurs, there wasn’t – there wasn’t anything to explain these conditions, except for a lot of inflammation, the ligaments were thickened, there were some adhesions, there was a lot of inflammation pushing on these nerves. So, these were just very common run-of-the-mill longstanding repetitive trauma kind of conditions and findings.” *Id.* at 35.

He was then asked what exactly about repetitive trauma causes inflammatory tissue and adhesions, to which he replied:

“It’s easiest to understand by looking at the bottom of your foot. If you look at the bottom of your foot, there are areas that we walk on our foot, on our heel, so to speak. That skin there is very thickened, you have got a lot of callous formation there. That’s because it’s chronically irritated, there’s chronically pressure on it, so the skin in that area responds by getting very thick, providing a nice, you know, thick, durable rugged skin. So, you can imagine if you give that kind of pressure to a ligament, the ligament is going to do the same thing. So, repetitive microtrauma to like a carpal tunnel ligament, the ligament gets thicker and thicker and thicker. While it’s getting thicker and thicker and thicker, that tunnel is getting smaller and smaller and smaller, and the pressure on that nerve is getting greater. So, it’s a very similar process that happens when we develop callouses on our hands and on our feet. The same thing happens with repetitive microtrauma to these ligaments. They get thicker and start putting pressure on the nerves.” *Id.* at 35-36.

Dr. Bradley also stated that both Petitioner’s preoperative symptoms and Petitioner’s clinical examination findings were consistent with his intraoperative findings during both his left and right-sided procedures. *Id.* at 36-37, 39-40.

With regard to the reasonableness and necessity of Petitioner’s treatment, Dr. Bradley testified that operative intervention was necessary, because Petitioner’s condition would not have improved with it. *Id.* at 42. Petitioner tried and failed conservative care with no relief in his symptoms, and his nerve conduction studies showed his conduction velocities were severely impacted by his conditions. *Id.* at 42. He noted that once these conditions

become severe, they typically do not respond to non-operative treatment. *Id.* at 42. He testified that all of the care Petitioner received was reasonable, necessary, and causally related to his work activities with the Department of Corrections. *Id.* at 43.

Dr. Bradley testified that Dr. Crandall's description of his experience at the facility was inconsistent with the histories provided to him by Respondent's staff he has treated. *Id.* at 44-45. He noted that microtrauma from dealing with the sticking locks, difficult keys, and jamming doors reported by staff such as Petitioner were "the exact kind of things that lead to the development of carpal/cubital tunnel. . ." *Id.* at 45-47.

On cross-examination, Dr. Bradley testified that repetition, force, and duration were all factors in repetitive trauma. *Id.* at 58. He acknowledged that the force required to open each lock and door would vary, with some being far more difficult than others; but he strongly disagreed with Dr. Crandall's opinion and testified that the amount of microtrauma Petitioner suffered over the last 20 years definitely contributed to his ill-being. *Id.* at 59-61.

Respondent also questioned Dr. Bradley about Petitioner's Guyon's tunnel. *Id.* at 61-65. Dr. Bradley stated that while Guyon's tunnel was certainly less frequent than carpal tunnel, he treated it monthly and "wouldn't call it rare". *Id.* at 63. When asked what types of occupations his Guyon's tunnel patients have, he answered, "So, I see Guyon's tunnel in people that have a lot of repetitive trauma to their wrists...I have seen it from time to time in the correctional officers...Anybody that is usually holding onto objects that can cause that repetitive trauma. . ." *Id.* at 64-65. Dr. Bradley stated that the same factors that contributed to Petitioner's development of carpal tunnel contributed to his development of Guyon's tunnel, as he pointed out that "Guyon's tunnel is located literally right next to the carpal tunnel." *Id.* at 62.

Respondent asked Dr. Bradley whether compression neuropathies can be idiopathic, and while Dr. Bradley acknowledged that these conditions can be labeled such, it would not be an appropriate assessment of Petitioner's conditions. *Id.* at 71-72. He noted that the term idiopathic was utilized "when we don't have a good reason for their development". *Id.* at 72. In Petitioner's case, however, he stated, "[W]e have at least some things that we think can participate in their development, so I wouldn't call these [idiopathic] by any means." *Id.* at 72.

CONCLUSIONS OF LAW

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

The Arbitrator notes that Petitioner spent 20 years as a correctional officer and food supply supervisor for Respondent. (T. 12) Petitioner was specific and detailed in outlining the frequent, intensive activities that he performed with his hands and arms during his employment with Respondent, which he noticed created painful symptoms. (T. 12-18, 30-46, 49, 52-55, 62, 63; PX7) Further, the record demonstrates that Petitioner had no risk factors, comorbidities or outside repetitive hobbies that would potentially contribute to the development of carpal or cubital tunnel syndrome. (RX5; RX6, pp. 12, 32). Moreover, Petitioner symptoms returned to baseline following the minor trauma to his left hand at work on March 6, 2022, from which he returned to work full duty for Respondent.

Petitioner also provided a work history timeline and a detailed job description of his duties for Respondent. (PX8; PX9) He reported that doors and locks were difficult to operate and consistently explained that his symptoms increased due to staffing shortages during the pandemic in both his medical histories and during trial.

Major Trevor Wright heard Petitioner's testimony that his job required the strenuous, repetitive use of his hands for the majority of his employment history for Respondent, and testified that Petitioner's testimony was correct. Further, Major Wright confirmed Petitioner's testimony of how his job duties increased during the facility's lock down. The Arbitrator observed the Petitioner and found him to be genial, sincere, consistent and credible.

Dr. Bradley and Dr. Crandall disagreed on the issue of causal connection. The Arbitrator first notes the discrepancy between Dr. Crandall's description of Respondent's facility, and that of Petitioner, whose testimony was corroborated by Major Wright. (T.36-37) Both Petitioner and Major Wright described the locks and doors and locks as difficult to open. (PX9; T.40) Major Wright explained why – the locks are 40 years old. (T.40)

Dr. Crandall opined that the activity necessary to be repetitive and forceful against resistance for a continuous four hours per day. *Id.* Dr. Crandall also testified that he did not consider Petitioner's entire work history for Respondent. (RX2, p.20-21) He did not consider any time past a two-year limitations period. *Id.* He did not consider any period beyond the time Petitioner was symptomatic. *Id.* at 21. Dr. Bradley testified to this latency concept and testified that repetitive trauma may develop for years before a patient begins to exhibit symptoms. (PX10, p.30-31)

Petitioner provided corroborated testimony and documentation, as to his repetitive activities at work. Dr. Bradley noted that the thickening and scar tissue exhibited in Petitioner's wrists and elbows was a hallmark sign of repetitive injury. *Id.* at 35. He further noted that Guyon's canal is typically seen in cases where the patient's employment is very hand intensive. *Id.* at 61-65.

Dr. Bradley considered Petitioner's complete work history and job duties, performed objective testing to confirm his diagnoses, which were confirmed at surgery, and opined that that Petitioner's 20 plus years of work in the Department of Corrections contributed to the development of his carpal and cubital tunnel syndrome, as well as Guyon's canal syndrome. The Arbitrator finds the opinion of Petitioner's treating surgeon, Dr. Bradley, to be persuasive on the issue of causation as he had a more accurate and complete understanding of Petitioner's job duties and history, and was therefore in the best position to judge the cause of Petitioner's complaints.

Given the totality of the evidence, the Arbitrator finds that Petitioner has met his burden in proving that his repetitive job duties caused an injury manifesting on or about May 15, 2022, arising out of and in the course of his employment. Moreover, in reliance on the credible testimony of the Petitioner, the persuasive opinion of Dr. Bradley, and the record taken as a whole, the Arbitrator finds that the Petitioner has met his burden and established that his current condition of ill-being in his bilateral arms, and hands/wrists is causally connected 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? The Arbitrator finds as follows:

Incorporating the above, the Arbitrator finds Petitioner is entitled to medical benefits. The Arbitrator finds Dr. Bradley's opinion regarding the reasonableness and necessity of Petitioner's medical treatment persuasive. Respondent's examiner, Dr. Crandall also acknowledged that Petitioner was a surgical candidate. (RX2, p.18)

Respondent is therefore ordered to pay the medical expenses contained in Petitioner's group exhibit and shall have credit for any amounts paid through its group carrier.

Issue (L): What is the nature and extent of the injury? The Arbitrator finds as follows:

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 places no weight on this factor.
- (ii) **Occupation:** Petitioner is currently retired. The Arbitrator places some weight on this factor.
- (iii) **Age:** Petitioner was 59 years old at the time of his injury. Arbitrator places some weight on this factor.
- (iv) **Earning Capacity:** There is no evidence of reduced earning capacity. The Arbitrator places some weight on this factor.
- (v) **Disability:** As a result of his employment, Petitioner developed bilateral carpal and cubital tunnel syndromes and Guyon's tunnel. (PX4) Due to the severity of Petitioner's compression neuropathies, he required surgical releases on his hands and elbows. (PX6) Petitioner testified that despite the improvement still has some symptoms that increase with activity. (T.23) He has reduced grip strength and takes over-the-counter Tylenol for pain and soreness. (T.23) The Arbitrator finds Petitioner's testimony about his disability proportionate to the severity of his injuries noted in the records and places significant weight on this factor.

Based upon the foregoing, the Arbitrator finds that Petitioner sustained a 10% loss of use of his left hand, a 7.5% loss of use of his left arm, a 7.5% loss of use of his right hand, and a 7.5% loss of use of his right arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022646
Case Name	Reyes Andrade v. Unistaff, Inc/Interlake Mecalux
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0366
Number of Pages of Decision	12
Decision Issued By	Christopher Harris, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Melvyn Romanoff, David Feuer
Respondent Attorney	Michael Latz

DATE FILED: 9/3/2025

/s/ Christopher Harris, Commissioner

Signature

DISSENT

/s/ Christopher Harris, Commissioner

Signature

20 WC 22646

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

REYES ANDRADE,

Petitioner,

vs.

NO: 20 WC 22646

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

In his order for prospective medical care, the Arbitrator directed the Respondent to pay TTD benefits for the period of time that the surgery causes the Petitioner to be temporarily, totally disabled. The Commission strikes this directive as the issue of additional TTD benefits following prospective medical treatment is reserved for a subsequent hearing. In all other respects, the Arbitrator's decision is affirmed and adopted.

20 WC 22646

Page 2

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator, filed November 7, 2024, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$373.33 per week for a period of 36-2/7 weeks, July 28, 2020 through April 8, 2021, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$5,491.98 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of 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 \$10,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 3, 2025

CAH/tdm
O: 8/21/25
052

/s/ Marc Parker
Marc Parker

/s/ Maria E. Portela
Maria E. Portela

DISSENT

While there is no dispute that Petitioner sustained an injury on July 27, 2020, Petitioner failed to provide any credible explanation for the dramatic differences between the September 12, 2020 cervical MRI and the June 5, 2021 cervical MRI. The September 2020 MRI revealed no disc protrusions, no compromise of the spinal cord, sac, or neural foramina, and no evidence of neural impingement at C4–C5. In stark contrast, the June 5, 2021 MRI documented a broad-based central posterior disc protrusion at C4–C5 measuring 5.5 mm, resulting in effacement and compression of the ventral cord. Petitioner offered no medical evidence, expert testimony, or plausible explanation linking this change to the July 2020 accident.

Petitioner in their brief argued that “the trauma to the neck was direct and immediate and strong”, and at oral argument was emphatic that the 5.5 mm disc protrusion at C4-C5 was instantly caused when the bar fell on the Petitioner. The sole argument Petitioner relies upon is Dr. Sokolowski’s March 25, 2021 exam report wherein he indicated that he reviewed the September 2020 MRI films and saw the C4-C5 disc herniation. These films were not provided to Respondent’s IME and no explanation in the record exists explaining why such a glaring omission from the MRI report occurred. It is further problematic that the radiologist notated a 1 mm protrusion at C5-C6 and a 3.2 mm protrusion at C6-C7, but failed to see a 5.5 mm herniation at C4-C5. The omission of an explanation as to why the disparity between the two MRIs is a deficiency which Petitioner failed to overcome.

As such, I find Dr. Hsu’s causation opinion to be more credible and would have awarded Petitioner accordingly. I therefore dissent from the majority’s decision.

/s/ Christopher A. Harris

Christopher A. Harris

September 3, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC022646
Case Name	Reyes Andrade v. Unistaff, Inc/Interlake Mecalux
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Melvyn Romanoff, David Feuer
Respondent Attorney	Michael Latz, Michael Latz

DATE FILED: 11/7/2024

/s/William McLaughlin, Arbitrator

Signature

INTEREST RATE WEEK OF NOVEMBER 6 2024 4.26%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

REYES ANDRADE

Employee/Petitioner

v.

UNISTAFF, INC.

Employer/Respondent

Case # **20** WC **022646**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **September 10, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 27, 2020**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$29,120.00**; the average weekly wage was **\$560.00**.

On the date of accident, Petitioner was **57** 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 **\$9,084.22** for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of **\$9,084.22**.

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

ORDER***MEDICAL BENEFITS***

Respondent shall pay to the Petitioner the reasonable and necessary medical services, pursuant to the medical fee schedule, of \$3,440.00 for Dr. Mark Sokolowski, 932.98 for Prescription Partners and \$1,119.00 for Midwest Specialty Pharmacy as provided in Sections 8(a) and 8.2 of the Act.

Temporary Partial Disability

Respondent shall pay Petitioner temporary partial disability benefits of \$373.33/week for 36 2/7th weeks, commencing July 28, 2020, through April 8, 2021, as provided in Section 8(a) of the Act.

Prospective medical care

The Respondent shall pay, pursuant to Sections 8(a) and 8.2 of the Act, for the cost of a cervical fusion surgery as recommended by Dr. Mark Sokolowski. Respondent shall pay for physical therapy, diagnostic exams, durable exercise equipment, medications and other reasonable and necessary medical services necessitated by the surgery. Respondent shall also pay TTD for the period of time that this surgery causes the Petitioner to be temporarily, totally disabled.

This award does not bar the petitioner from subsequent hearings and determinations of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

STATEMENT OF INTEREST RATE IF the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment;

however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



NOVEMBER 7 2024

Signature of Arbitrator

ICArbDec19(b)

Reyes Andrade

Vs.

20WC022646

Unistaff, Inc

FINDINGS OF FACT

This matter proceeded for a hearing on September 10, 2024, before Arbitrator William McLaughlin.

Petitioner Reyes Andrade testified that he was employed by Unistaff Inc on July 27, 2020. While working that day Petitioner testified A bar with hanging parts fell on him from a height of three meters and injured his neck. (Tr.11). Petitioner testified the bar consisted of many small parts, weighing about 3 pounds each, with a total weight of approximately 400 pounds. (Tr. 10)

After the accident the Petitioner was referred to Concentra by the Respondent. At Concentra he received physical therapy and was advised that he might need surgery on his neck. (Tr. 12). Dr. Wellington Hsu, and Dr. Kevin Koutsky recommended an anterior cervical discectomy and fusion.

Mr. Andrade sought the opinion of Dr. Mark Sokolowski in March of 2021. Petitioner testified that no one referred him to this doctor; he found him on his own. (Tr. 13). Dr. Sokolowski noted on 8/11/2021, that said surgery had been approved by the insurer. The surgery would have been a C4-5ACDF, that being an anterior cervical discectomy and fusion. The surgery did not proceed at that time due to the Petitioner having a severe asthma attack and not being cleared for surgery which had been scheduled for 8/25/2021.

On May 2, 2022, Petitioner presented to Dr. Wellington Hsu for an IME. Dr. Hsu opined that the accident caused a temporary soft tissue strain to the cervical spine. Dr. Hsu concluded there was a need for surgery but the injury requiring surgery was unrelated to the work accident. He attributed the possible need for surgery to Mr. Andrade's pre-existing condition of cervical

spondylosis. Furthermore, he opined that at the time he examined Mr. Andrade he no longer needs said surgery . . . “since he has chosen not to proceed with” (it). (RX. 3). The Petitioner testified he did not say that he did not want to proceed with the surgery. (Tr. 24) Petitioner explained that his diabetes was a complication delaying the surgery. (Tr.25)

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant’s testimony is inconsistent with his actual behavior and conduct, the Commission holds that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It’s the function of the Commission to judge credibility of witnesses and resolve conflicts in medical evidence and assign weight to witness testimony. O’Dette v. Industrial Commission, 79 Ill.2d 249 (1980); Hosteny v. Workers’ Compensation Commission, 397 Ill. App. 3d 665 (2009).

The Arbitrator finds the testimony of the Petitioner to be credible and consistent with medical records and history.

(F) IS THE PETITIONERS CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY

The Arbitrator finds the Petitioners testimony to be credible and consistent with the medical records submitted. The evidence established that the Petitioner was struck on his neck and upper back by a heavy piece of metal. Dr. Koutsky, as well as Dr. Sokolowski recommended a fusion surgery. After a review of the MRI images, Dr. Sokolowski opined “Having personally reviewed the images of two independent MRI studies, I can attest a C4-5-disc herniation clearly impinges the traversing nerve roots. Were the IME examiner to have the benefit of the studies, I am certain he would arrive at the same conclusion.” (PX. 4). Arbitrator gives more weight to Dr. Sokolowski than that of the conclusions drawn by that Dr. Hsu, the IME who indicated that his opinion might change if he were to view the original films. (RX. 2).

Arbitrator also finds the Petitioners testimony credible when he testified, he wants the surgery. Prior to the July 27, 2020. accident, Petitioner testified he felt fine and had never sought treatment for his back. (TR. 11)

Even if the Arbitrator gives weight to Dr. Hsu opinion that the Petitioner’s condition is related to Petitioner’s underlying condition of cervical spondylosis, Arbitrator finds the need for surgery was accelerated by the accident. It is well established that the accident need not be the only cause or even the main cause. The need for surgery is causally related if the accident contributed to the onset of the condition of ill-being.

Based on the above reasoning the arbitrator finds that Mr. Andrade’s accident of July 27, 2020, is causally related to his need for cervical spine surgery.

(J) WHERE THE MEDICAL SERVICES PROVIDED TO PETITIONER REASONABLE AND NECESSARY AND HAS RESPONDANT PAID ALL APPROPRIATE MEDICAL BILLS.

Because the arbitrator found causation, and based on the evidence presented, and the reasoning set forth heretofore in this decision, Arbitrator finds the Respondent liable for the unpaid medical bills pursuant to the fee schedule.

1. \$3,440.00 – Dr. Mark Sokolowski
2. \$932.98 – Prescription Partners
3. \$1,119.00 Midwest Specialty Pharmacy

(K) IS THE PETITIONER ENTITLED TO ANY PROPESTICE MEDICAL SERVICES?

The Arbitrator gives great weight to the recommendations of Dr. Koustky and Dr. Sokolowski, and for of the reasons set forth hereinabove, the Arbitrator finds the Respondent responsible for the payment of the expense of cervical spine surgery as recommended. and for temporary total disability benefits for the period of time the surgery causes the Petitioner to be temporarily, totally disabled.

(L) WHAT TTD IS OWED?

For all the reasons set for above the Arbitrator finds the Respondent responsible for TTD from July 28, 2020, through April 8, 2021. When at which time Petitioner was released for light duty which he is currently performing for a for a different employer.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC034716
Case Name	INSURANCE COMPLIANCE v. LA BOMBA FOOD RESTAURANT, INC AKA LA BOMBA PLACE CORP AKA LA BOMBA FOOD CORP
Consolidated Cases	
Proceeding Type	Notice of Non-Compliance
Decision Type	Commission Decision
Commission Decision Number	25IWCC0367
Number of Pages of Decision	8
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	

DATE FILED: 9/5/2025

/s/Stephen Mathis, Commissioner

Signature

24 WC 34716

24 INC 00113

Page 1

STATE OF ILLINOIS

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) SS.

COUNTY OF COOK

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☐ 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 34716

24 INC 00113

La Bomba Food Restaurant, Inc., and
Wilson Torres, Individually and as Officer,

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 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 2,054 days. A hearing was held before Commissioner Stephen Mathis in Chicago, Illinois on May 6, 2025. Proper and timely notice was provided to Respondents. Px1. Petitioner was represented by the Office of the Attorney General. Respondents did not appear in person or through counsel. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, \$500.00 per day for each of the 2,054 days, from 06/03/17 to 02/02/18, 04/07/18 to 05/17/18, 11/18/18 to 12/01/18, 02/14/19 to 09/21/20, 11/25/20 to 02/09/24, when Respondents did business and failed to provide coverage for their employees. Petitioner seeks a total award of \$1,027,000.00.

The Commission, after considering the record in its entirety and being advised of the applicable law, finds that Respondents knowingly and willfully violated section 4(a) of the Act and section 9100.90 of the Rules Governing Practice before the Illinois Workers' Compensation Commission (Rules) during the period in question. As a result, Respondents shall be held liable for non-compliance with the Act 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 Respondents under section 4 of the Act in the sum of \$1,027,000.00.

I. Findings of Fact

Investigator Marco Johnson personally served Respondents La Bomba Food Restaurant, Inc. and Wilson Torres with a Notice of Insurance Compliance Hearing on January 16, 2025. Px 2.

On March 12, 2025, Notices of Insurance Compliance Hearing were sent via certified mail to La Bomba Food Restaurant, Inc. and Wilson Torres for the May 6, 2025, hearing date. Px 1.

Michael Montino, an Investigator for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Inv. Montino identified Petitioner's Exhibit 3 as a Notice of Non-Compliance mailed to Wilson Torres individually and as president of La Bomba Food Restaurant, Inc. a/k/a La Bomba Food Corp. The notice states that the Commission's records indicated that La Bomba Food Restaurant, Inc. and Wilson Torres were not in compliance with the requirements of Section 4(a) for the period from September 30, 2016 – March 15, 2017, June 3, 2017 – February 2, 2018, April 7, 2018 – December 1, 2018, and February 14, 2019 – June 13, 2024. The notice includes an affidavit indicating service by mail on September 9, 2024. Px 3.

Inv. Montino identified Petitioner's Exhibit 4 as three Requests for Informal Conference mailed to Wilson Torres individually and as president of La Bomba Place Corp. Page one states that the Commission's records indicated that La Bomba Food Restaurant, Inc. and Wilson Torres were not in compliance with the requirements of Section 4 for the period from September 30, 2016 – March 15, 2017, June 3, 2017 – February 2, 2018, April 7, 2018 – December 1, 2018, and February 14, 2019 – June 13, 2024. The notice includes an affidavit indicating service by mail on May 13, 2024. Px 4. Page two states that the Commission's records indicated that La Bomba Food Restaurant, Inc. and Wilson Torres were not in compliance with the requirements of Section 4 for the period from September 30, 2016 – March 15, 2017, June 3, 2017 – February 2, 2018, April 7, 2018 – December 1, 2018, and February 14, 2019 – June 13, 2024. The notice includes an affidavit indicating service by mail on July 2, 2024. Px 4. Page three states that the Commission's records indicated that La Bomba Food Restaurant, Inc. and Wilson Torres were not in compliance with the requirements of Section 4 for the period from September 30, 2016 – March 15, 2017, June 3, 2017 – February 2, 2018, April 7, 2018 – December 1, 2018, and February 14, 2019 – June 13, 2024. The notice includes an affidavit indicating service by mail on September 9, 2024. Px 4.

Inv. Montino identified Petitioner's Exhibit 5 as a Business Entity Search for Respondents. The Report indicates that La Bomba Food Restaurant, Inc. was formed on September 30, 2016, and was dissolved on February 9, 2024. The report also indicates that Wilson Torres was the president of La Bomba Food Restaurant, Inc. and that the registered agent was Mark Davica. Px 5.

Inv. Montino testified that in the regular course of his investigation, he also obtained documents related to La Bomba Food Restaurant, Inc. from the Illinois Secretary of State. The

reports indicate that the company was incorporated on September 30, 2016, with Michael W. Hansen as the registered agent. Px 6, p. 24. The registered agent changed to KGG, LLC on July 11, 2017. *Id.* at 22. La Bomba filed an annual report for 2017 naming Wilson Torres as president and director. *Id.* at 21. The registered agent changed to Hector G. Borquez on April 16, 2018. *Id.* at 19. The company dissolved on February 14, 2020, for failure to file an annual report. *Id.* at 16. Hector Borquez resigned as registered agent as of November 15, 2020. *Id.* at 15. The company was reinstated as of July 6, 2023, and the registered agent was changed to Mark Davila. *Id.* at 3. The company dissolved on February 9, 2024. *Id.* at 2.

Inv. Montino testified that La Bomba Food Restaurant, Inc. falls under the Workers' Compensation Act's automatic coverage provisions pursuant to Section 3(12), for alcohol being served on the premises, and pursuant to Section 3(14) because food is served to the public.

Inv. Montino further testified that Petitioner requested insurance information regarding Respondents from the National Council of Compliance 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 La Bomba Food Restaurant, Inc. did not file policy information showing proof of workers' compensation insurance at any time from December 13, 2016 – March 15, 2017, June 3, 2017 – February 2, 2018, April 7, 2018 – May 17, 2018, November 18, 2018 – December 1, 2018, February 14, 2019 – September 21, 2020, and November 25, 2020 – June 25, 2024. *Id.* at 3.

Inv. Montino further testified that Petitioner's Exhibit 8 was a certified finding from the Department of Self-Insurance that Respondents were not self-insured with the State of Illinois during the dates indicated and that it was the type of document requested in the ordinary course of Petitioner's investigations. The document indicates that no certificate of approval to self-insure was issued to La Bomba Food Restaurant for the period of September 30, 2016, through September 30, 2024. *Id.*

Inv. Montino further testified that in the regular course of his investigation, Petitioner requested information regarding Respondents from the Illinois Department of Revenue. Petitioner submitted Petitioner's Exhibit 12 comprised of certified records of Illinois Withholding Income Tax Returns from the Department of Revenue filed by La Bomba Food Restaurant, Inc. for filing periods September 30, 2016, through June 30, 2024, and Illinois Small Business Corporation Replacement Tax Returns for 2017-2023. Px 12.

Inv. Montino further testified that Petitioner's Exhibit 10 was certified records of Employer's Quarterly Wage Reports for La Bomba Food Restaurant, Inc. for the first quarter of 2017 through the first quarter of 2024 from the Department of Employment Security. Px 10.

Inv. Montino testified that based upon his investigation, Petitioner determined that Respondents did not have workers' compensation insurance for the period for which it requests relief, from June 3, 2017, through February 2, 2018, April 7, 2018, through May 17, 2018, November 18, 2018, through December 1, 2018, February 14, 2019, through September 21, 2020, and November 25, 2020, through February 9, 2024.

Inv. Montino identified Petitioner's Exhibit 11 as printouts from the Department of Insurance's former Access system for Wilson Torres, individually and as owner of La Bomba Restaurant. Px 11. The document indicates that Respondents were issued a ticket for insurance noncompliance for the period of December 12, 2016, through March 15, 2017, in the amount of \$1,500.00. *Id.* at 2-3. The ticket was paid on March 12, 2018. *Id.* at 3.

Inv. Montino identified Petitioner's Exhibit 9 as printouts from CompFile showing the case docket for case No. 17WC003039, *Francisco Mendez v. La Bomba Food Restaurant, Inc.* Px 9.¹

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 are open to the general public and serve alcoholic beverages to the general public for consumption on the premises and if they serve 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 sections 3(12) and 3(14) of the Act. This finding is based on Inv. Montino's testimony that the business served alcohol and food to the public. Accordingly, the Commission finds that the work Respondents engaged in automatically subjected them to the provisions of the Illinois Workers' Compensation Act.

Pursuant to section 4(a) of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance. See 820 ILCS 305/4(a). Section 9100.90(a) of our Rules similarly provides that any employer subject to section 3 of the Act shall insure payment of compensation required by section 4(a) of the Act "by obtaining approval from the Commission to operate as a self-insurer or by insuring its entire liability to pay the compensation in some insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a). Section 9100.90(c)(3)(E) of our Rules similarly provides 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). Section 9100.90(c)(3)(D) of our Rules provides that "[a] certification from an employee of the National Council on Compensation Insurance stating that no policy information page has been filed in accordance with Section 9100.20 shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(c)(3)(D). 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.

¹ This case has settled.

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 La Bomba Food Restaurant, Inc. for the period of September 30, 2016, through September 30, 2024.

Petitioner also submitted the NCCI certification that La Bomba Food Restaurant, Inc. did not file policy information showing proof of workers' compensation insurance at any time from June 3, 2017, through February 2, 2018, April 7, 2018, through May 17, 2018, November 18, 2018, through December 1, 2018, February 14, 2019, through September 21, 2020, and November 25, 2020, through February 9, 2024.

Inv. Montino 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 June 3, 2017, through February 2, 2018, April 7, 2018, through May 17, 2018, November 18, 2018, through December 1, 2018, February 14, 2019, through September 21, 2020, and November 25, 2020, through February 9, 2024.

La Bomba Food Restaurant, Inc. was also a named respondent in a now-settled case before the Illinois Workers' Compensation Commission for date of accident January 18, 2017.

Respondents did not attend the hearing and thus presented no evidence indicating that they provided workers' compensation insurance of any kind during this period. Accordingly, the Commission concludes that Petitioner proved that Respondents failed to comply with the legal obligations imposed by section 4(a) of the Act from June 3, 2017, through February 2, 2018, April 7, 2018, through May 17, 2018, November 18, 2018, through December 1, 2018, February 14, 2019, through September 21, 2020, and November 25, 2020, through February 9, 2024.

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 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).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer. 50 Ill. Adm. Code 9100.90(c). Section 9100.90(c) of the Rules further 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(c).

In this case, Petitioner submitted into evidence the Notice of Non-Compliance mailed to Wilson Torres, individually and as officer of La Bomba Food Restaurant, Inc., in the form prescribed by our Rules and including an affidavit of service. Petitioner also submitted the notices for the May 6, 2025, insurance compliance hearing, in the form prescribed by our Rules, accompanied by signed investigative reports indicating that La Bomba Food Restaurant, Inc. was personally served via its registered agent, as well as by certified mail, and that the individual defendant was served via certified mail to their last known addresses. The insurance compliance hearing allowed the Commission to introduce evidence and testimony and afforded Respondents the opportunity to do the same, had they chosen to attend personally or through counsel. Accordingly, the Commission concludes that reasonable and proper notice of hearing was provided to Respondents.

On the merits, the Commission has considered the following factors in assessing penalties against an uninsured employer: (1) the length of time the employer had been violating the Act; (2) the number of workers' compensation claims brought against the employer; (3) whether the employer had been made aware of his conduct in the past; (4) the number of employees working for the employer; (5) the employer's ability to secure and pay for workers' compensation coverage; (6) whether the employer had alleged mitigating circumstances; and (7) the employer's ability to pay the assessed amount. *See, e.g., State of Illinois v. Murphy Container Service*, 7 IWCC 1037.

The Commission finds that the period of time during which Respondents violated the Act by failing to obtain workers' compensation insurance was significant. Respondents failed to have insurance for 2,054 days, from June 3, 2017, through February 2, 2018, April 7, 2018, through May 17, 2018, November 18, 2018, through December 1, 2018, February 14, 2019, through September 21, 2020, and November 25, 2020, through February 9, 2024. There is one settled workers' compensation claim against Respondents for date of accident January 18, 2017. Respondents were issued a ticket for insurance noncompliance for December 12, 2016, through March 15, 2017, which Respondents paid on March 12, 2018. All of the alleged dates of noncompliance occurred after Respondents had been made aware of the requirement to have workers' compensation insurance and after an employee was injured. IDES records show that Respondents employed up to eight employees. Moreover, having reviewed the record, the Commission finds no evidence as to Respondent's inability to secure and pay for workers' compensation coverage and no evidence of mitigating circumstances.

The Commission concludes that Respondents knowingly and willfully failed to comply with the Act. Based on the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of \$1,027,000.00 against Respondents, La Bomba Food Restaurant, Inc. and Wilson Torres, individually and as officer of La Bomba Food Restaurant, Inc.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, La Bomba Food Restaurant, Inc. and Wilson Torres, individually and as officer of La Bomba Food Restaurant, Inc., pay to the Illinois Workers' Compensation Commission the sum of \$1,027,000.00 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission 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.

September 5, 2025

d-8/12/2025

SJM

44

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Amylee Simonovich

Amylee Simonovich

/s/ Kathryn A. Doerries

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC014901
Case Name	Ted Chapin (Widow of Lori Russell-Chapin) v. Bradley University
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0368
Number of Pages of Decision	19
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	David Galanti
Respondent Attorney	James Holecek

DATE FILED: 9/8/2025

/s/ Frank Soto, Commissioner

Signature

18 WC 14901

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Ted Chapin (Widow of Lori Russell-Chapin) ,
 Petitioner,

vs.

NO: 18 WC 14901

Bradley University,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of benefit rates, occupational disease, statute of limitations, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 26, 2024 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$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.

September 8, 2025

O: 09/03/25

FJS/as

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	18WC014901
Case Name	Ted Chapin, Widow of Lori Russell-Chapin v. Bradley University
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	David Galanti
Respondent Attorney	Stuart Pellish

DATE FILED: 8/26/2024

/s/ Maureen Pulia, Arbitrator
Signature

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

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**

TED CHAPIN, WIDOW OF LORI RUSSELL-CHAPIN,

Employee/Decedent

Case # **18** WC **14901**

v.

Consolidated cases: _____

BRADLEY 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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/19/24**. 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 Decedent sustain an occupational disease that arose out of and in the course of Decedent's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Decedent's current condition of ill-being causally related to the injury?
- G. ☐ What were Decedent's earnings?
- H. ☐ What was Decedent's age at the time of the accident?
- I. ☐ What was Decedent's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Decedent 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 **12/26/17**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Decedent *did* sustain an occupational disease that arose out of and in the course of employment.

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

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

In the year preceding the injury, Decedent earned **\$130,000.00**; the average weekly wage was **\$2,500.00**.

On the date of accident, Decedent was **66** years of age, *married* with **no** dependent children.

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

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

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

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

ORDER

Respondent shall pay death benefits, commencing **3/14/24**, of **\$1,666.67/week** to the surviving spouse, **Ted Chapin**, on his or her own behalf, until **\$500,000 has been paid or 25 years**, whichever is greater, have been paid, because the injury caused the employee's death, as provided in Section 7 of the Act.

If the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished.

Respondent shall pay **\$8,000** for burial expenses to the surviving spouse or the person(s) incurring the burial expenses, as provided in Section 7(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the **Rate Adjustment Fund**, as provided in Section 8(g) of the Act.

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

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


Signature of Arbitrator

August 26, 2024

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

The petitioner (Ted Chapin, widow of Lori Russell- Chapin), alleges that the decedent (Lori Russell- Chapin), a 66 year old professor, sustained an occupational disease that arose out of and in the course of her employment by respondent on 12/26/17, due to her exposure to asbestos containing material. Decedent died on 3/13/24. Her immediate cause of death was identified as cardiopulmonary arrest. Significant conditions contributing to her death, but not resulting in the cardiopulmonary arrest, included mesothelioma, bronchiectasis, and respiratory failure.

Petitioner and decedent were married on 7/9/87 in Albany, Wyoming, and were still married on 3/13/24.

On 2/9/23, decedent underwent a Section 12 performed by Dr. Sanjiv Modi, MBBS, at the request of the respondent. Modi reviewed medical records from 12/5/17 through 4/10/19. Dr. Modi is Board certified in Medical Oncology, Hematology, and Internal Medicine. Dr. Modi noted in his report that treatment and care of a patient suffering from mesothelioma is an area of medicine that falls within the specialty of Hematology- Oncology. Decedent reported her complaints, and provided a summary of her treatment to date. Decedent gave a history of working for respondent since August of 1987. She noted that she mostly worked in Westlake Hall in the basement. She reported that at some point during her employment a water pipe broke, and the area was cleaned up. She stated that the furniture was removed and then put back. She also stated that while the area was being abated and restored, she worked in a different building. She also noted that some of her colleagues have been diagnosed with breast and esophageal cancer. Decedent reported that she moved from Wyoming to Peoria in 1987, and has been in her current home for the past 25 years. This home was her 3rd home in Peoria. She stated that her medical history includes mesothelioma and bronchiectasis, and a diagnosis of pneumonia in June 2022. She noted that she had been on supplemental oxygen since then. Decedent testified that she was hospitalized with atrial fibrillation in December of 2022.

Following a record review, interview of decedent, and examination, Dr. Modi diagnosed mesothelioma since 12/27/17; bronchiectasis with chronic pseudomonas colonization; recent pneumonia in June of 2022 with supplemental oxygen since that time; and, atrial fibrillation that was diagnosed in December of 2022. Dr. Modi was of the opinion that from a medical oncology viewpoint, decedent's mesothelioma was in remission after receiving 4 cycles of neoadjuvant chemotherapy with carboplatin and Alimta followed by pleurectomy. He was of the opinion that there was no radiographic evidence of recurrent disease based on the most recent CT scan of 4/10/19. Dr. Modi was of the opinion that the treatment decedent received for her mesothelioma was reasonable and necessary. Dr. Modi opined that since decedent's mesothelioma was in remission, that she had reached maximum medical improvement as of 12/28/18. He did not recommend any restrictions on decedent's ability to perform her full duty work at Bradley University, as it relates to her diagnosis of mesothelioma.

On 11/30/23 the evidence deposition of decedent was taken due to her failing health. On this date decedent was in her home at 4940 North Weaverridge Blvd, Peoria, IL, where she had lived for 27 years with the petitioner, her husband.

Decedent began working for respondent in August of 1987 as an assistant professor. At that time, she had an office in Westlake Hall. Decedent remained in that building while she worked for respondent for 37 years. During that period, she had four different offices in that building. Decedent testified that her first office was on the second floor (ground level). Then she moved closer to the windows. After that she moved down to the office next to the dean's office, because she had taken on some administrative tasks. Lastly, after respondent had completed renovations or abatements, she moved to her final office. Decedent also testified that she mostly taught in Westlake Hall. Decedent taught her classes in a counseling clinic in the basement. She stated that she spent some time teaching in a classroom in another building. Decedent spent 65% of her day in the counseling clinic.

Decedent testified that during the time she was in the clinic, the hallways were all tile, as well as the one classroom (lab). She also stated that the counseling clinic had a "nasty carpet" in it. Decedent testified that the basement ceiling where she taught and had her counseling records, as well as the bathroom on that floor, had open piping in the ceiling that was covered with something that looked like cheese cloth. She was 95% sure that there were no drop ceilings that covered the piping.

Decedent testified that when she started working in the basement the piping coverage was in good condition. However, she stated that at some point the pipes burst and everything was flooded and ruined, and she asked for new furniture. Decedent stated that she was told they would clean up it up, but they were not getting any new furniture. Decedent stated that they were moved out of the basement for less than a month to Campus Town. When she moved back in the furniture was the same, the carpet was the same, and the material on the pipes in a small storage room near the counseling clinic where she would take the students to talk privately, was hanging from the pipes in the ceiling of that area. She testified that the materials on the pipes in the classroom and counseling clinic had been taken care of.

Decedent testified that the mailroom was on the ground floor. Decedent would go to get her mail and that was also where the Xerox machines were located, and she copied everything. In the mailroom there were ceilings, but she could see the pipes coming down on the side. They were also covered with what looked like cheese cloth, and they looked shiny too.

Decedent testified that from when she started working in Westlake Hall in 1987 through the 2000's before the remodel, no one from respondent told her there was asbestos in Westlake Hall in any form. She further

testified that no one ever told her not to touch the piping coverings, or not to touch the dust that may appear on her desk or in any of the rooms where she worked in Westlake Hall. Decedent testified that the remodel of Westlake Hall was in a fairly recent decade. She testified that Westlake Hall was never abated until the last remodel. She stated that she was never made aware that the remodel included any abatement of any asbestos or any other material, but noticed individuals in Hazmat suits when the remodel was going on.

Decedent testified that in her 65 years of life she was never in the hospital, and was very healthy. Then she just started coughing badly and saw her primary care physician. She testified that a lot of blood work and tests were done, but they showed nothing. Decedent then had a chest x-ray that was suspicious. As a result, additional tests and biopsies were performed, and she was ultimately diagnosed with mesothelioma by a board of doctors at the University of Chicago (UC). On 12/26/17 she underwent a needle core biopsy of the left upper lobe of the lung. The final diagnosis was malignant mesothelioma, epithelioid type.

The doctor she saw at UC was Dr. Hedy Kindler, an oncologist and mesothelioma expert, she found after doing her research. Following a lung biopsy that was positive for mesothelioma, and was corroborated by several tumor boards, she underwent four months of chemotherapy, and tons of antibiotics to get rid of the infections in her lungs. Thereafter, she had surgery on 7/30/18. The surgery performed was a flexible bronchoscopy; left thoracotomy decortication and parietal pleurectomy; wedge resection of the left upper lobe mass; and, mediastinal lymph node dissection. The postoperative diagnosis was left malignant pleural mesothelioma and multiple lung abscesses. She stated that she was left with a chronic lung disease.

Decedent testified that Dr. Kindler and every doctor she saw for her mesothelioma asked her about asbestos exposure. Decedent testified that Westlake Hall is the oldest building on campus, and there were rumors that there was asbestos in the building.

As of 11/30/23, decedent was going to Dr. Kindler at UC every six months to have a CT done to see if the mesothelioma had returned or was growing. She testified that she also had an oncologist, a cardiologist, a hematologist, and a pulmonologist, that all wanted different things. She stated that she was always being treated for severe lung infections, for which she nebulized 4 hours a day. She testified that last CT scan did not show any concerns.

Decedent testified that during her treatment she was able to continue to treat because before the pandemic those in the counseling department had gone to a completely accredited online program, and she chose to teach the online courses. She stated that she could not teach for three hours, and was happy she could teach on her computer. Prior to going online, decedent was hired as a campus-based person who was required to be on respondent's campus at Westlake Hall in order to perform her teaching/clinic duties.

On cross examination decedent testified that she was raised in Worland, Wyoming, and lived in a single family home with her parents through high school. She stated the house had carpet throughout, including the kitchen. She further stated that there was popcorn ceiling in the living room, and some of the other ceilings in the other rooms were tile. Decedent was asked questions regarding the various dorms/houses/apartments she lived in during her undergraduate and post graduate studies, and decedent stated there were not, or she could not recall if there were any popcorn ceilings in the various buildings she lived in. Decedent was then asked questions about her jobs prior to coming to Bradley University. She stated that some buildings were old and others were not. She denied ever working on an Indian reservation. She also testified to living in a house in a new subdivision in 1973 with her first husband, Bob Moberly, who had his own construction business where he built commercial parking lots surrounding areas of buildings. They divorced in 1985.

Decedent testified that while she was married to Moberly, they lived in a new apartment in Worland, Wyoming. She then went to school to finish her bachelor's degree in Laramie, Wyoming where she lived in apartments or sorority houses. She testified that her and Moberly had z-brick installed in her home in Laramie in the late 1970s. The company that owned z-brick removed asbestos from their z-brick in 1974.

Decedent testified that both her parents were deceased, and that her father died from brain cancer, and her sister died from pancreatic cancer. She testified that her brother is alive and healthy. Decedent testified that her uncle died from mesothelioma. She stated that her uncle did not live close to her when she was growing up.

Decedent testified that since she and the petitioner moved to Peoria in 1987, they have lived in 3 homes. The first was for 3 years, the second for 7 years, and her current home for 27 years. She testified that they put a great room on her current home. She stated that they contracted with someone to do it, and they were gone working in Greece while it was built. Decedent testified that none of their homes in Peoria had any popcorn ceilings.

Decedent testified that she saw dangling of strings (strips of cheese cloth) from the pipes in the clinic and the storage room next to the clinic.

Decedent taught in the spring of 2023, and then took a sabbatical during the fall semester of 2023. She testified that she would be back teaching remotely in the spring 2024.

On redirect examination Decedent testified that while working at Westlake Hall she worked in rooms 111 and 113.

Petitioner was called as a witness on behalf of respondent. Petitioner testified that he had been to decedent's birth home where she went to grammar and high school over 30 years ago and did not recall if the

home had a popcorn ceiling in the living room. Petitioner testified that he did not recall ever meeting decedent's ex-husband, never had a conversation with him, and did not know what kind of work he had done.

Petitioner testified that he had met decedent's mother, brother, sister-in-law and nephews when he was living in Wyoming. Petitioner stated that the decedent's sister died from pancreatic cancer, and her dad died before he was in the picture. He believed decedent's dad died from a complication of a military injury. He testified that decedent's dad had shrapnel in his lungs and it went from his lungs to his brain and he died.

Petitioner testified that he and the decedent lived in a number of homes in the Peoria area. He stated that they had some remodeling done on the Columbia Terrace home. He testified that the fireplace was not removed. He did not recall any abatement being done in the home. He stated that they had some kitchen work done that included a repair of a patch of the ceiling. He did not recall them being home when the work was being done since they both worked all the time. Petitioner testified that he knew nothing of the home decedent and her ex-husband lived in.

Petitioner testified that decedent had her first episode of Afib after her surgery from mesothelioma. Sometime thereafter, the decedent's Afib developed into a more chronic state. Petitioner did not know what medications decedent took for her Afib. Petitioner testified that in March of 2024 he could not wake decedent up and called for an ambulance. Decedent was taken to the hospital where she died on 3/13/24.

Decedent has 2 surviving adult children. Jaimeson Russel Chapin was born on 10/2/93, and Elisa Whitney Chapin was born on 10/2/91. Petitioner is the father of both children.

On 6/19/19 the evidence deposition of Dr. Arthur Frank, board certified in internal medicine and occupational medicine, was taken. Dr. Frank undertakes asbestos-related research in a number of settings. At the time of his deposition Dr. Frank was working on papers on the exposure of asbestos in Sri Lanka, and in Columbia, and was also lecturing around the world on the subject of asbestos. Dr. Frank testified that he had been working in the field of asbestos and asbestos-related disease for over 50 years. Dr. Frank opined that extraordinarily small amounts of asbestos can cause disease. He further opined that people get exposed to asbestos by directly handling it; by being in the environment where you may not handle the asbestos but breathe it; familial asbestos where workers bring asbestos home on their clothes, shoes or person and contaminate a household and others in the home can get diseases like mesothelioma; and, neighborhood exposure where if you live within a half of a mile of an asbestos-utilizing facility you may get mesothelioma even with the great dilutional effect out to a half of a mile. Dr. Frank opined that as little as one day of exposure to asbestos can give rise to mesothelioma. He further opined that people who worked for a month or less in an area where they

are exposed to mesothelioma for a week or two has a twofold increased risk of getting lung cancer. Dr. Frank opined that there is no known safe level of exposure to asbestos.

Dr. Frank testified that he is familiar with how asbestos becomes airborne and how it is breathed in by humans at work. He testified that the latency (time between first exposure and the development of asbestos diseases) is on the order of about 10 years, but can occur in shorter periods of time, or longer periods of time, and can last the rest of one's lifetime. Dr. Frank opined that all forms of asbestos can cause mesothelioma, and can cause mesothelioma at very low levels of exposure.

Dr. Frank reviewed the file of the decedent and issued a report dated 9/4/18. The file contained a variety of medical records, pathology records, diagnostic records, a letter dated August 8th from an attorney with decedent's law firm that outlined decedent's work history and where it was that she was exposed to asbestos. Based on these materials, Dr. Frank opined that decedent suffered from malignant pleural mesothelioma that was diagnosed at the end of 2017. Dr. Frank opined that he was familiar with the type of potential and known exposures decedent had at work, and that this relatively light exposure, led to her getting a malignant pleural mesothelioma. Dr. Frank was of the opinion that there was pipe insulation in the basement of Westlake Hall and that the thermal insulation and pipe insulation manufactured over the years contained asbestos, whether it is chrysotile or amosite. Dr. Frank was of the opinion that probably more than one half of all popcorn ceilings were asbestos-containing popcorn-like kernels. Dr. Frank was further of the opinion that disintegrating pipe wrap or popcorn materials that are disturbed are going to give off levels of asbestos closer to the legally allowable limit than very, very low background levels that everyone is exposed to. Dr. Frank was of the opinion that if the pipe insulation in Westlake Hall was in disrepair as decedent claimed, that tells us that the fibers were being put into the air that decedent would have been breathing. He testified that when there is asbestos that needs to be removed, there are regulations that state that such abatement or removal should be done properly and safely, which means the people doing the removal must wear approved respirators, put up plastic to contain any fibers that may be released, and, refrain from picking up and throwing the pieces that fall to ground in the garbage, but rather putting the pieces in a plastic bag and disposing of them in a hazardous waste landfill. Dr. Frank was of the opinion that a janitor picking up the pieces of insulation falling off the pipe and placing them in the trash can easily crush the fibers out of the insulation simply by his hand pressure when picking it up, and this can release the fibers into the air, where there is constant reattainment allowing people to rebreathe asbestos-containing materials over time. Dr. Frank was of the opinion that it is not possible to remove all of the asbestos in such a situation, if it is not properly abated.

Dr. Frank opined that if decedent was exposed to asbestos dust from friable and fallen pipe insulation in the basement of Westlake Hall while she was performing her duties as a professor and counselor at Bradley

University, that such exposure would have basically caused or contributed to the cumulative exposure that caused her mesothelioma, and that these exposures arose out of and in the scope of her employment by respondent, specifically at Westlake Hall. Dr. Frank further opined that if decedent was exposed to asbestos dust and particles that had dropped from popcorn type ceilings in the basement of Westlake Hall while performing her work duties for respondent, that would have been a substantial contributing factor to her developing mesothelioma, and if it was the only factor, that it would be sufficient to give her mesothelioma. Dr. Frank opined that if decedent was exposed to asbestos dust in the mailroom in Westlake Hall on a daily basis while she was retrieving her work relate mail, and that respondent notified its employees in 2010 or 2011 that abatement had taken place in the mailroom, that there would have been asbestos present, and decedent would have been exposed to friable materials that needed abatement. Dr. Frank was of the opinion that abatement is usually done on asbestos materials that are friable and in need of removal, not on asbestos materials that are in good shape. Dr. Frank testified that he has had experiences with other universities where asbestos was present, and they dealt with the potentially hazardous stuff first.

Dr. Frank opined that decedent's exposure alone at Westlake Hall was a substantially contributing cause to her mesothelioma, and if that had been her only exposures over time, that would be sufficient to have caused her mesothelioma. Dr. Frank could not identify any other potential causes of decedent's mesothelioma other than asbestos pipe insulation that was friable, had broken, and was not properly abated; asbestos from popcorn ceiling materials that had fallen from the ceilings in various classrooms; and, an unknown friable asbestos product in the mailroom that had later been abated.

On cross-examination, Dr. Frank testified that most of his asbestos cases involve work on behalf of the plaintiff. Dr. Frank never spoke to decedent or her family members, and never performed any research or investigation into the Peoria area or Bradley University beyond the cover letter received from decedent's lawyer. Dr. Frank testified that one mine in Libby, Montana mines vermiculite, and it is heavily contaminated with asbestos. He was of the opinion that the contamination emanated from the mining in Libby, Montana, probably 20-30 miles outside Libby, Montana. Dr. Frank testified that he was aware decedent's father was a masonry, but did not do any hands-on work at the masonry business. Dr. Frank admitted that one does not need to be performing masonry work, but simply needs to be in an area where there is asbestos to have exposure and get it on their clothes. He agreed it would be difficult for decedent to remember when she was 2-4 years old where her father went and what he did and what he brought home on his clothes. Dr. Frank said it did not matter how close decedent lived to an asbestos related facility or mining as a child since her last known exposure was at work for respondent. Dr. Frank was of the opinion that if there was a processing plant where

she lived it would be relevant, but if it was greater than ½ mile away, there is no evidence in the literature that distances beyond that have been shown to cause cases of mesothelioma.

Dr. Frank testified that if decedent had vinyl asbestos flooring removed from her kitchen floor in Peoria, that if it was not properly abated, and the asbestos fibers that were released remained after the abatement job, and they were still there when the decedent returned, that could be a sufficient exposure for the development of mesothelioma.

With respect to the letter Dr. Frank received from decedent's counsel, there was nothing specifically stated in the letter that the piping on the insulation in Westlake Hall was coming off and flaking down, or that the unknown or unidentifiable asbestos within the mail room was not properly encapsulated. Dr. Frank was of the opinion if the decedent regularly used talc powder, or if her mother used it on her bottom when she was a child, that theoretically could be sufficient exposure to talc to cause mesothelioma. Dr. Frank said he did not know if decedent used talc powder, or if her mother used it on her when she was a baby. Dr. Frank was of the opinion that if while decedent was growing up and living in rural Wyoming in the 1970's and 1980's, and had exposure to asbestos related materials personally or secondarily, that cumulative exposures to these asbestos related materials could help explain her mesothelioma.

On redirect examination, Dr. Frank opined that even if decedent had all of the hypothetical exposures that were brought up on cross examination, and had one of the exposures at Bradley University that were brought up on direct examination, the exposures at Bradley University absolutely still could have contributed to cause her mesothelioma.

On 11/18/21 the evidence deposition of Leroy Neilson, Corporate Representative of Bradley University, was taken. Neilson has worked for respondent since 1989. He was in the union and in 1990 was an operating engineer. He was responsible for the mechanical systems that included heating and cooling. In 1992 he was a working foreman maintenance engineer. He was responsible for the repair work on the mechanical systems, including heating and cooling throughout the campus, including Westlake Hall. Neilson testified that there were asbestos containing materials in Westlake Hall in 1989.

In 2003, he left the union and became the utilities supervisor at Bradley University. In this position, Neilson was involved in the coordination of construction projects, and overseeing the plumbing, electrical and mechanical work at Bradley University. Neilson testified that part of the renovation project for Westlake Hall that took place from 2011-2012/2013 included the removal of any asbestos materials prior to the renovation. He testified that asbestos was present in certain rooms between 1980-2012/2013. Neilson testified that he only had safety awareness training as it relates to asbestos abatement. In 1999, OSHA issued a memo regarding a

steam leak or series of problems with the piping system in 1989. Neilson testified that Bradley University hired Ideal Engineering to work on asbestos related projects at Westlake Hall, and Bradley University relied on Ideal Engineering to perform testing, as well as removal and repair work relating to asbestos at Westlake Hall.

Neilson testified that asbestos containing materials were in the mechanical room, room 103 in Westlake Hall, that were abated in 2008. He testified that it was very possible that the steam line could have run through classroom 107. He testified the steam line ran directly to the north from the mechanical room to room 112. Neilson agreed that there exists an Asbestos Removal Report dated 11/2/04 that shows asbestos removal was completed on or about 11/2/04 in rooms 111 and 113 in the basement of Westlake Hall. Neilson testified that part of the asbestos removal process included some damage to the insulation of a pipefitting in room 111-A. Neilson noted that asbestos repairs were done on or about 11/4/07. At that time, asbestos repairs were done to room 110 in Westlake Hall. Additional asbestos removal was completed in early November of 2001 on the pipes. Neilson testified that there are 275 fittings on Westlake Hall that had covers that contained 10% chrysotile and 35% amosite that in 2000 were friable. There were 2500 lineal feet of piping throughout Westlake Hall. Neilson agreed that the "asbestos project Manager's Final Report 10-4-10" stated "remove asbestos containing insulation from piping systems for approximately 2,500 lineal feet throughout the first, second and third floors." It also noted "remove asbestos containing insulation from piping systems for approximately 20 linear feet from Lounge 112." Neilson agreed that 75 bags of pipe insulation material was removed from the first floor in 2010. Neilson agreed that the 2500 lineal feet of asbestos containing pipe covering in Westlake Hall were identified in 2000, and that on occasions the pipe insulation was damaged between 1989-2013, most notably in 2010. Neilson agreed that the earliest documents Bradley University provides indicate asbestos testing and abatement started in 1997. Neilson stated that the last asbestos containing pipe insulation at Westlake Hall would have been installed around 1972 or 1973.

Neilson testified that he believed decedent worked in her office and classroom on the first floor, and the mailroom, room 204, on the second floor. Neilson agreed that a report dated 11/1/10 shows less than .01 fibers per cc of asbestos after the abatement project was completed. Neilson testified that there would be no reason for any professor to go to the mechanical room.

On 10/5/23 Dr. Jeremiah Crabb, Clinical Assistant Professor, U of C College of Medicine, Pulmonary Disease Critical Care Medicine, Illinois Lung & Critical Care Institute, Peoria, issued a letter "To Whom It May Concern." Dr. Crabb's letter was in support of decedent's workman's compensation determination. Dr. Crabb noted that decedent was under his care since October 2021. He noted that her left thoracotomy with partial left upper lobe resection for a mesothelioma with ongoing compromise of her breathing. He noted that she suffered from chronic hypoxemic respiratory failure requiring supplemental oxygen. He also noted that she

had advanced combined restrictive and obstructive lung disease with bronchiectasis, post inflammatory pulmonary fibrosis and recurrent lower respiratory tract infections. Dr. Crabb indicated that decedent had been hospitalized with pulmonary embolism, and was very compromised due to her complicated lung disease. He noted that she fatigued easily and was short of breath with most activity, and her lung disease significantly impacted her ability to practice and teach her profession as a clinical psychologist and counselor. He noted that she was able to practice via telemedicine but her respiratory problems significantly reduce her ability to practice full time and on an unrestricted basis. He was of the opinion that it also significantly compromised her activities of daily living, walking, talking, and personal hygiene.

C. DID DECEDENT SUSTAIN AN OCCUPATIONAL DISEASE THAT AROSE OUT OF AND IN THE COURSE OF DECEDENT'S EMPLOYMENT BY RESPONDENT?

F. IS DECEDENT'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE OCCUPATIONAL DISEASE?

An "occupational disease" is defined by statute as "a disease arising out of and in the course of the employment or which has been aggravated and rendered disabling as a result of the exposure of the employment." 820 ILCS 310/1(d). Thus, the Workers' Occupational Disease Act provides recovery for two types of diseases: those caused by employment and those aggravated by employment. Fitts v Industrial Commission, 172 Ill.2d 303, 666 N.E.2d 4, 216 Ill.Dec. 836 (1996). The concept of "arising out of employment" encompasses situations in which it appears to a rational mind that a causal connection exists between a work condition and the disease, the disease must have its origin or aggravation in a risk connected to the employment and must naturally result from that risk. 820 ILCS 310/1(d).

Exposure to the hazards of an occupational disease is a necessary element of the claim. Under the Workers' Occupational Diseases Act, an employee is deemed to have been exposed "when, for any length of time, however short, he or she is employed in an occupation or process in which the hazard of the disease exists." 820 ILCS 310/1(d).

In the case at bar, decedent began working for respondent in Westlake Hall in 1987 and remained in that building, working for respondent for 37 years. During that period, she had 4 offices in Westlake Hall, and taught all her classes in a counseling clinic in the basement of Westlake Hall. She also had private conversations with her students in the storage room next to the clinic. She testified that there were exposed pipes in these rooms, as well as in the mailroom, where she went daily to get her mail, use the Xerox machine, and make copies. Decedent testified that the rooms she worked in mostly in Westlake Hall were rooms 111 and 113. She testified that she was never informed that there was any asbestos in Westlake Hall.

Neilson testified that there were asbestos containing materials in Westlake Hall in 1989. He also noted that in 1999 OSHA issued a memo regarding a steam leak or series of problems with the piping system in 1989.

Neilson testified that part of the renovation project for Westlake Hall that took place from 2011-2012/2013 included the removal of any asbestos materials. Neilson testified that asbestos was present in certain rooms between 1980-2012/2013. He further testified that Bradley University hired Ideal Engineering to work on asbestos related projects at Westlake Hall. Neilson testified that there exists an Asbestos Removal Report dated 11/2/04 that showed asbestos removal was completed on or about 11/2/04 in rooms 111 and 113 in the basement of Westlake Hall. He further testified that part of the asbestos removal process included some damage to the insulation of a pipefitting in room 111-A. That repair was done on or about 11/4/07. The arbitrator finds this significant given that decedent worked in rooms 111 and 113 of Westlake Hall.

Neilson testified that there are 275 fittings on Westlake Hall that had covers that contained 10% chrysotile and 35% amosite, that in 2000 were friable. He also noted that there were 2500 lineal feet of piping throughout Westlake Hall. Neilson agreed that the “asbestos project Manager’s Final Report 10-4-10” stated “remove asbestos containing insulation from piping systems for approximately 2,500 lineal feet throughout the first, second and third floors.” It also noted “remove asbestos containing insulation from piping systems for approximately 20 linear feet from Lounge 112.” Neilson agreed that 75 bags of pipe insulation material was removed from the first floor in 2010. Neilson agreed that the 2500 lineal feet of asbestos containing pipe covering in Westlake Hall were identified in 2000, and that on occasions the pipe insulation was damaged between 1989-2013, most notably in 2010.

Decedent testified that when she started working in Westlake Hall the piping coverage was in good condition. However, at some point the pipes burst and everything was flood and ruined. She testified that she asked for new furniture, but after the cleanup she returned and the old furniture was still there, the carpet was the same, and the cheese cloth material on the pipes in the small storage room near the counseling clinic where she would take the students to talk privately, was hanging from the pipes in the ceiling. She testified that Westlake Hall was never abated until the last remodel. Although she was never made aware that the remodel included any abatement of any asbestos or any other material, she did notice individuals in Hazmat suits when the remodel was going on.

Decedent testified that one day she started coughing badly, and after a lot of tests and biopsies, she was diagnosed with malignant mesothelioma on 12/26/17.

The only opinion offered with respect to causal connection was that of Dr. Frank. Dr. Frank opined that extraordinarily small amounts of asbestos can cause disease. He further opined that people get exposed to asbestos by directly handling it; by being in the environment where you may not handle the asbestos but breathe it; familial asbestos where workers bring asbestos home on their clothes, shoes or person and contaminate a household and others in the home can get diseases like mesothelioma; and, neighborhood exposure where if you

live within a half of a mile of an asbestos-utilizing facility you may get mesothelioma even with the great dilutional effect out to a half of a mile. Dr. Frank opined that as little as one day of exposure to asbestos can give rise to mesothelioma. Dr. Frank opined that there is no known safe level of exposure to asbestos. Dr. Frank opined that all forms of asbestos can cause mesothelioma, and can cause mesothelioma at very low levels of exposure.

Dr. Frank opined that decedent suffered from malignant pleural mesothelioma that was diagnosed at the end of 2017. He opined that he was familiar with the type of potential and known exposures decedent had at work, and that this relatively light exposure, led to her getting a malignant pleural mesothelioma. Dr. Frank was of the opinion that there was pipe insulation in the basement of Westlake Hall, and that the thermal insulation and pipe insulation manufactured over the years contained asbestos, whether it is chrysotile or amosite. Dr. Frank was further of the opinion that disintegrating pipe wrap that is disturbed is going to give off levels of asbestos closer to the legally allowable limit than very, very low background levels that everyone is exposed to. Dr. Frank was of the opinion that if the pipe insulation in Westlake Hall was in disrepair as decedent claimed, that tells us that the fibers were being put into the air that decedent would have been breathing. The arbitrator finds this significant given the testimony of Neilson who corroborated petitioner's testimony that there was asbestos containing material on the pipes in rooms 111 and 113 in Westlake Hall that had to undergo abate. The arbitrator notes that rooms 111 and 113 in Westlake Hall were the rooms where petitioner taught and counseled her students.

Dr. Frank opined that if decedent was exposed to asbestos dust from friable and fallen pipe insulation in the basement of Westlake Hall while she was performing her duties as a professor and counselor at Bradley University, that such exposure would have basically caused or contributed to the cumulative exposure that caused her mesothelioma, and that these exposures arose out of and in the scope of her employment by respondent, specifically at Westlake Hall. Dr. Frank opined that if decedent was exposed to asbestos dust in the mailroom in Westlake Hall on a daily basis while she was retrieving her work mail, and that respondent notified its employees in 2010 or 2011 that abatement had taken place in the mailroom, that there would have been asbestos present, and decedent would have been exposed to friable materials that needed abatement. Dr. Frank was of the opinion that abatement is usually done on asbestos materials that are friable and in need of removal, not on asbestos materials that are in good shape.

Dr. Frank opined that decedent's exposure at Westlake Hall alone, was a substantial contributing cause to her mesothelioma, and if that had been her only exposures over time, that would be sufficient to have caused her mesothelioma. Dr. Frank could not identify any other potential causes of decedent's mesothelioma other than asbestos pipe insulation that as friable, had broken, and was not properly abated; asbestos from popcorn

ceiling materials that had fallen from the ceilings in various classrooms; and, an unknown friable asbestos product in the mailroom that had later been abated. The arbitrator notes that respondent tried to allege other locations that decedent may have been exposed to asbestos, be it in her home when she was a child, or in a home where she did some remodeling. However, these claims were speculative at best, given that respondent provided no credible evidence to support a finding that these materials she was allegedly exposed to were friable and contained asbestos containing material. Respondent also tried to alleged that decedent may have been exposed to asbestos from the one mine in Libby, Montana that mined vermiculite. Dr. Frank opined that if there was a processing plant where she lived it would be relevant, but if it was greater than ½ mile away, there is no evidence in the literature that distances beyond that have been shown to cause cases of mesothelioma. Decedent lived in Worland, Montana, which was 639 miles away, and there is no credible evidence to support a finding that she was ever within ½ mile of Libby, Montana.

On redirect examination, Dr. Frank opined that even if decedent had all of the hypothetical exposures that were brought up by respondent, and had one exposure at Bradley University, the exposure at Bradley University absolutely still could have contributed to cause her mesothelioma.

The arbitrator finds it significant that Neilson agreed that the 2500 lineal feet of asbestos containing pipe covering in Westlake Hall were identified in 2000, and that on occasions the pipe insulation was damaged between 1989 and 2013, most notably in 2010. The arbitrator also finds it significant that the asbestos containing piping in the basement of Westlake Hall was abated during decedent's tenure with respondent, and the fact that it was specifically done in rooms 111 and 113, which were the rooms where decedent worked. Additionally, the arbitrator notes that after the abatement in most of the first floor of Westlake Hall, decedent still noted that the pipe covering in the storage room where she talked privately with her students still had pipe coverings that were dangling from the pipe that had been disturbed.

Although Dr. Modi did not offer a casual connection opinion, he did diagnosis decedent with mesothelioma.

Decedent died on 3/13/24. Her death certificate shows that the immediate cause of death was cardiopulmonary arrest. It also identified the significant conditions contributing to her death as mesothelioma, bronchiectasis, and respiratory failure.

Based on the above, as well as the credible evidence, the arbitrator finds the decedent has proven by a preponderance of the credible evidence that she sustained an occupational disease arising out of and in the course of her employment by respondent which was aggravated and rendered disabling as a result of the exposure of the employment to asbestos containing material, and that the decedent's diagnosis of mesothelioma

on 12/26/17 is causally related to her work in respondent's Westlake Hall for 37 years, and her death on 3/14/24 is causally related to her mesothelioma.

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

Having found the decedent has proven by a preponderance of the credible evidence that she sustained an occupational disease arising out of and in the course of her employment by respondent which was aggravated and rendered disabling as a result of the exposure of the employment to asbestos containing material, and that her diagnosis of mesothelioma on 12/26/17 is causally related to her work in respondent's Westlake Hall for 37 years, and her death on 3/14/24 is causally related to her mesothelioma, the arbitrator finds the petitioner is entitled to death benefits pursuant to Section 7(f) of the Act.

Decedent and petitioner married on 7/9/87 and were still married upon decedent's death on 3/13/24.

Respondent shall pay death benefits, commencing **3/14/24**, of **\$1,666.67/week** to the surviving spouse, **Ted Chapin**, on his or her own behalf, until **\$500,000 has been been paid or 25 years** , whichever is greater, have been paid, because the injury caused the employee's death, as provided in Section 7 of the Act.

If the surviving spouse remarries, and no children remain eligible, Respondent shall pay the surviving spouse a lump sum equal to two years of compensation benefits; all further rights of the surviving spouse shall be extinguished.

Respondent shall pay **\$8,000** for burial expenses to the surviving spouse or the person(s) incurring the burial expenses, as provided in Section 7(f) of the Act.

Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the **Rate Adjustment Fund**, as provided in Section 8(g) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC034826
Case Name	Tara Johnson v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0369
Number of Pages of Decision	17
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 9/8/2025

/s/Frank Soto, Commissioner

Signature

21 WC 34826

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF SAGAMON)

☒ 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

Tara Johnson,

Petitioner,

vs.

NO: 21 WC 34826

State of Illinois - Graham Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

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

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

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

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

21 WC 34826
Page 2

September 8, 2025

O: 09/03/25

FJS/as

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	21WC034826
Case Name	Tara Johnson v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 7/25/2024

/s/ Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JULY 23, 2024 4.99%

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



July 25, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
 COUNTY OF SANGAMON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

TARA JOHNSON
 Employee/Petitioner

Case # **21WC034826**

v.

Consolidated cases: _____

STATE OF ILLINOIS/GRAHAM CORR. CTR.
 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 **June 25, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **December 6, 2021**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$74,100.00**; the average weekly wage was **\$1,425.00**.

On the date of accident, Petitioner was **46** years of age, *single* 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 of **all paid** for TTD, \$- for TPD, \$- for maintenance, and - for other benefits, for a total credit of **all benefits paid**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's group exhibit related to the treatment of the injury, as provided in § 8(a) of the Act.

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

Respondent shall pay Petitioner permanent partial disability benefits of **\$855.00/week** for **110.75** weeks, because the injuries sustained caused the **12.5% loss of the right and left hands (47.5 weeks)** and the **12.5% loss of the right and left arms (63.25 weeks)**, as provided in § 8(e) of the Act.

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

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

Edward Lee
Signature of Arbitrator

July 25, 2024

STATE OF ILLINOIS)
) ss
 COUNTY OF SANGAMON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

TARA JOHNSON
 Employee/Petitioner

v.

Case # **21WC034826**

STATE OF ILLINOIS/GRAHAM CORR. CTR.
 Employer/Respondent

FINDINGS OF FACT

Background

At the time her injuries manifested, Petitioner was a 46-year-old Correctional Officer at Respondent's Graham Correctional Center facility. (T.7) She began her career with Respondent in January of 2013. (T.7; PX8) Prior thereto, she worked as a teller and sales service specialist for Bank of America. (T.7-8) In May of 2022, Petitioner transferred to Southwestern Illinois Correctional Center as an officer (T.7)

On December 22, 2021, Petitioner filed an Application for Adjustment of Claim alleging repetitive injuries to her bilateral hands and elbows. (AX2) Respondent disputes accident, causal connection, liability for medical expenses, and the nature and extent of the injury. (T.4; AX1)

Petitioner's Testimony and Job History

Petitioner introduced a Job Description and Work History Timeline detailing her duties over her more than decade-long tenure as a Correctional Officer. (T.15; PX7; PX8) She cuffed and uncuffed inmates, performed shakedowns, moved and lifted property boxes during searches, and opened and closed cell doors on a daily basis. (T.15-16; PX7) She also described writing reports, sending correspondence, completing logs in the visit room and housing units, and working in the control room. (T.24; PX7) Petitioner indicated that she had to open cells after count checks twice a day. (PX7) She stated at Arbitration that a number of the locks were difficult to open and could take up to 30 seconds to release. (T.30-31) She specifically recalled an occasions where she had to ask the control officer to come and help her open a padlock. (T.31)

Respondent introduced a "Job Assignments" document into evidence along with a Position Description, and counsel questioned Petitioner about her regular job assignments at the facility. (RX3; RX4 T.8-9) While Respondent's purport to reflect how much time Petitioner spent at various posts, Petitioner testified that she received her actual assignment for the day at roll call,

which was often different than what her roster reflected. (T.8-9) She further testified that personnel can be moved mid-shift. (T.8-9) She later explained:

I worked a lot of time in the visiting room, but I – I would work in the armory before the visiting room opened. I would go do – to different housing units. We would do shakedowns where we would go through all the cells and through – the inmates would go out of the room. We would go through the property boxes, the mattresses, we would pull of the bed and just check for contraband and stuff that they weren't – it's called a compliance check, so stuff that they weren't supposed to have. Then if I worked overtime I mean I usually was in a housing unit. (T.22-23)

Petitioner testified that she worked a lot of overtime. (T.26) Over her near decade of work as an officer at Graham, she estimated that around 70% of her time was spent working on the wings, which contained a total of 100 cells for the entire house. (T.8, 28) Petitioner testified that in addition to 100 cell doors, there were four keypads that had to be opened to access the wing log books. (T.28)

Petitioner explained that her duties increased during the pandemic lockdown, since inmates were not allowed to leave their cell and go to dietary to eat or to the showers in line passes. (T.9-10) As a result, she had to visit each cell individually and unlock it to deliver food trays, lock it after the delivery, and then repeat the process to pick up the food tray at the end of meals. (T.9-10) She same process was employed to allow all of the inmates to shower. (T.9-10) Petitioner also assumed the duties of the inmate workers who were not permitted to leave their cells. (T.10) In addition to the lack of inmate workers, Petitioner testified on cross-examination that she and other officers had to absorb the work of the correctional staff that became ill. (T.22)

Petitioner testified that she developed symptoms in the course of her duties, particularly during the pandemic. (T.14) She described that “it would almost feel like there was like electricity going through [her] arm” when she tried to turn a lock. (T.14) She stated that although her symptoms began two years after she started in the Department of Corrections, she was able to “shake them off” because they weren't severe. (T.14) As the years progressed, however, her symptoms did also; and she developed weakness and began dropping thing, which prompted her to seek treatment. (T.14-15, 21)

Petitioner candidly acknowledged that she developed gestational diabetes during her pregnancies, which placed her at increased risk for diabetes. (T.11) She acknowledged the she was placed on medication in 2016; but she testified that her A1C numbers have been low, and she would be off medication soon. (T.13) She testified that she did not have any of the symptoms described above while she had gestational diabetes. (T.17) She does not suffer from gout, hypothyroidism, or rheumatoid arthritis. (T.13)

Testimony of Major Trevor Wright

Major Trevor Wright was present on behalf of Respondent but called by Petitioner. (T.32) He was present for Petitioner's testimony and verified Petitioner's testimony was accurate. (T.32-35) He agreed that the total number of cells in all housing unit wings was 100. (T.33) He also

testified that Respondent is approximately 60 Correctional Officers short, even with taking into consideration the 20 future officers currently in the academy class. (T.34) He testified that the number locks Petitioner would have to turn varies depending on the status of the facility, but he indicated that on a normal day alone, Petitioner would likely have to unlock and lock 100 doors through her shift. (T.35-36)

Medical History

Petitioner came under the care of Dr. Matthew Bradley on December 2, 2021. (PX3) He took the history of Petitioner's complaints and noted that her symptoms worsened during the facility lockdown "due to increased keying of cells and handcuffs." *Id.* Petitioner denied any hobbies that required repetitive motion, and she did not have a history of thyroid disease or obesity. *Id.* Petitioner candidly reported having Type 2 diabetes, but Dr. Bradley noted that her A1C numbers consistently remained in the 6s. *Id.* Examination of the wrists showed markedly positive signs with Tinel's and Phalen's testing bilaterally. *Id.* Examination of the bilateral elbows also showed positive Tinel's signs bilaterally. *Id.* X-rays showed no acute fractures, dislocation, or significant degenerative changes. *Id.* Dr. Bradley found no signs of symptom magnification or malingering during the examination. *Id.*

Dr. Bradley's assessment was bilateral carpal and cubital tunnel syndromes. *Id.* He noted that Petitioner had already been attempting to manage her condition conservatively with immobilization and anti-inflammatory medication, but her symptoms continued to worsen and began awakening her at night. *Id.* He referred Petitioner for EMG and nerve conduction studies to assess the severity of her conditions. *Id.*

Nerve studies were performed by Dr. Yadava on the same day and showed objective evidence of moderate-to-severe right carpal tunnel syndrome, moderate left carpal tunnel syndrome, and mild to moderate bilateral Guyon's canal syndrome and cubital tunnel syndrome. (PX3, 12/6/21; PX4) Dr. Bradley reviewed these findings and recommended for the time being that Petitioner continue conservative care. (PX3, 12/6/21) Based on Petitioner's history, Dr. Bradley believed that Petitioner's employment was a causal factor in her conditions and need for treatment. *Id.*

Petitioner called Dr. Bradley on December 20, 2021, and she reported that she continued to have severe numbness, tingling, and burning despite the use of medication and adhering to her daily home exercise program. (PX3) Since the chronicity of Petitioner's condition only progressed, Dr. Bradley recommended surgery and instructed Petitioner to obtain preoperative clearance. *Id.*; (PX5)

On March 30, 2022, Dr. Bradley performed right open carpal tunnel release and right ulnar nerve neurolysis. (PX3; PX6) Objective intraoperative findings showed compression of the ulnar nerve distally as it entered into the fascia and flattening of the median nerve of the wrist without any evidence of an inter-tunnel cyst or mass. *Id.* During the postoperative follow-up on April 18, 2022, Petitioner reported that her symptoms on her right side were overall significantly improved,

though she had some soreness over her incision as well as weakness in grip strength for which he gave her specific therapy exercises. (PX3)

On May 4, 2022, Petitioner underwent left open carpal tunnel release and left cubital tunnel decompression. (PX3; PX5) Dr. Bradley noted objective intraoperative findings of high constriction of the ulnar nerve as it entered into the fascia, thickening of the transverse carpal ligament, and flattening of the median nerve as it went into the carpal tunnel. *Id.* At the post-operative visit of May 19, 2022, Petitioner reported residual stiffness and ache in her upper extremities, but overall she again reported significant improvement in her symptoms. (PX3) Dr. Bradley reviewed Petitioner's home exercise program, encouraged her to continue her exercise and medication regimen, and allowed her to return to unrestricted work. *Id.*

Petitioner followed up with Dr. Bradley on June 20, 2022, for her final visit and reported that she was better overall and able to work full duty, but she still had residual symptoms of soreness as well as pain in her thumbs. (PX3) He encouraged her to continue her home exercise program and to take medication as needed, and he placed her at maximum medical improvement. *Id.*

Petitioner testified at Arbitration that surgery significantly improved her symptoms. (T.18) She happily reported that she no longer awakens during the night or drops things, but she still testified that there were residual effects from her injuries. (T.18) Her weakness persists, and she finds it difficult to unscrew drink caps. (T.18-19) She reported pain while resting her elbows on a table. (T.18) She also reported that increased activity begets discomfort. (T.19)

Opinion and Testimony of Dr. Patrick Stewart

Respondent had Petitioner examined by Dr. Stewart on May 27, 2022. (RX6) Dr. Stewart examined Petitioner, reviewed her medical records, and took the history of her complaints and purportedly took her occupational history. *Id.* He noted Petitioner listed no hobbies. *Id.* He also reviewed a position description that he characterized as a "generalized description", which was entered into evidence as Respondent's Exhibit 4. *Id.* It apportioned 20% of Petitioner's duties to the housing unit, 20% to writs, 20% to the tower, 20% to patrols, 10% to form completion and disciplinary actions, 5% to maintenance safety and requisitions, and 5% to other activities as needed. (RX4; RX6) He included a description of Petitioner's duties in the day room, control room, and visiting room, but included no description of Petitioner's time as a gallery officer. (RX6)

Dr. Stewart agreed that Petitioner suffered from bilateral carpal and cubital tunnel syndromes with possible persistent ulnar tunnel syndrome and agreed that Petitioner's treatment was reasonable and necessary, with the exception of the x-rays of the upper extremities. (RX6) However, he claimed that Petitioner "showed lack of candor, and was deceptive in her answers" to questions about the discussion she had with Dr. Bradley about her EMG results showing both cubital tunnel and ulnar tunnel. *Id.* He found no causal relationship between Petitioner's conditions and her employment. *Id.* He believed that Petitioner's comorbid conditions were the only factor in her development of compression neuropathies. *Id.*

Dr. Stewart testified by way of deposition on January 3, 2023. (RX7) His testimony on direct examination was largely consistent with his opinions as expressed in his report. *Id.* He

acknowledged that 85% to 90% of his independent medical evaluations are done at the request of respondents. *Id.* at 7. He noted he had performed 25 IMEs at the request of the State of Illinois for claimants employed at Graham Correctional Center. *Id.* at 7. He charges \$2,500.00 per examination and \$1,500.00 per deposition. *Id.* at 7-8.

Dr. Stewart testified that Petitioner had several comorbid risk factors. *Id.* at 15. He cited her gender, thyroid disease, diabetes, and a prior history of smoking. *Id.* at 15-16. He acknowledged, however, that Petitioner's blood sugar was so well controlled that she was taken off of medication and that being a prior smoker was a less significant factor. *Id.* at 15-16. He testified that he toured Respondent's facility and did not find any of the activities he witnessed to be a risk factor for compression neuropathy. *Id.* at 18-19, 21. He admitted, however, that there were some areas of the facility that he did not visit. *Id.* at 19-20. Nevertheless, he did not believe that any of Petitioner's job duties contributed to her development of compression neuropathy. *Id.* at 21-22. He further testified that he did not believe Petitioner's releases were performed in the usual manner, as he believed the release should have been more extensive, despite finding her treatment reasonable in his report. *Id.* at 22-23, 41-42; (RX6)

On cross-examination, Dr. Stewart was asked whether he agreed that risk factors, such as diabetes, reduced her threshold for the development of compression neuropathy. *Id.* at 37-38. He testified in the negative and stated, "The risk factor is de novo of any other activities." *Id.* at 37-38. While confirming this opinion using an analogy, he testified that a diabetic person who uses vibratory tools for a living and a diabetic person who watches monitors for a living would have equal risk for the development of compression neuropathy. *Id.* at 39.

Dr. Stewart had no information about Petitioner's job history prior to becoming a Correctional Officer. *Id.* at 39. He was also not provided with or informed of the opinion of Respondent's prior examiner who did find a causal relationship between the duties of an officer and repetitive injury. *Id.* at 39-40. He was also not provided with Dr. Bradley's final office note. *Id.* at 43.

Dr. Stewart acknowledged that he gave nominal weight to the generalized description of the Correctional Officer post, because he was aware that staff rotation did not regularly occur and that officers may be stationed in the same position for years. *Id.* at 44-45.

Opinion and Testimony of Dr. Matthew Bradley

Dr. Bradley also testified by way of deposition. (PX9) He testified that he is a board certified orthopedic surgeon with extensive clinical and surgical experience in treating injured patients for work-related and non-work-related injuries. *Id.* at 5-6. He stated he rarely performs independent medical evaluations. *Id.* at 6. As he testified to his clinical observations noted in his treatment records, Dr. Bradley explained that Petitioner's x-rays were necessary. *Id.* at 11. He explained:

The x-rays look at bones. Bones can certainly contribute to the symptoms in a patient, whether they're new fractures, old fractures that haven't healed, bone spurs, abnormal bone formations. Cancers, growths, stuff like that can contribute to symptoms that we see in patients. They're fairly easy, quick to get, so standard of care is x-rays of the joint that are hurting patients. *Id.* at 11.

Dr. Bradley testified that he is familiar with the duties of a Correctional Officer and stated that he has treated staff from multiple correctional institutions, including Graham. *Id.* at 18-19. He has seen independent medical evaluations from several physicians. *Id.* at 19. He acknowledged that Petitioner suffered from comorbid risk factors which placed her at increased risk for compression neuropathy. *Id.* 20-21. He testified that these conditions reduced her threshold for the development of compression neuropathy, but did not diminish the contribution Petitioner's job made to her conditions. *Id.* at 21-22. He explained:

. . . What that means is that an activity that I could do repetitively throughout the day would not cause carpal or cubital tunnel to become symptomatic in me. But in an individual like her, where she has these kind of things working against her, it takes a lot less of a stimulating or a factor or an activity to cause what was very likely her asymptomatic carpal tunnel or cubital tunnel to become symptomatic. And over the time of doing this, those symptoms became worse . . . I don't think her job caused, by any means, carpal or cubital tunnel syndrome. I think her job contributed to it going from asymptomatic to symptomatic, and as long as she continued to do her job, it got worse and worse with time. *Id.* at 21-22.

He later explained that these conditions are typically multifactorial, meaning that there are "many different things that all contribute to them." *Id.* at 73. When asked what duties he felt particularly aggravated Petitioner's condition, he cited opening the facility locks. *Id.* at 22-23. He stated:

The lock's something I hear on multiple of my correctional officers. My understanding of these locks is they don't always open. The inmates jam stuff in them. They can be difficult at times. When you go to unlock something you think it's unlocked and it's not, there's microtrauma that happens, and if you have to adjust the key, push the key, vibrate the key, move the key, that could contribute to it.

With respect to her cubital tunnel, we typically see cubital tunnel on kind of forced pulling of objects, like pulling boxes in and out. And these – like I said, these seem like very minimal things, but when done repetitively over five, six, seven years and done repetitively in individuals that are already kind of right at the edge of being symptomatic, it kind of forces them over that edge, knocks them off the cliff, so to speak. *Id.* at 23.

As a result, he felt Petitioner's work duties were a contributing factor to her need for treatment. *Id.* at 30-31.

On cross-examination, Dr. Bradley testified that he has reviewed the Correctional Officer job description and the job site analysis for Graham Correctional Center over the course of treating several of Respondent's employees, which he took into consideration in rendering his opinion. *Id.* at 38-39, 43. He was also asked about the length of the releases during surgical procedures, and he testified that the length of the release is "utterly irrelevant to the injury." *Id.* at 62. He noted that the incisions are measured in millimeters, and since the patient is awake during the procedure and muscles are moving, variance was expected. *Id.* at 62-63. He noted that his technique is effective

in achieving good postoperative results and in allowing patients to swiftly return to work. *Id.* at 64-65.

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 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* further highlights that there is no standard threshold which a claimant must meet in order for his or her job to classify as sufficiently "repetitive" to establish causal connection. *Edward Hines*, 365 Ill.App.3d 186, 825 N.E.2d 773, 292 Ill.Dec. 185 (Ill.App.2d Dist. 2005). In fact, the Court expressly stated, "There is no legal requirement that a certain percentage of the workday be spent on a task in order to support a finding of repetitive trauma." *Id.* at N.E.2d 780. Similarly, the Commission 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" (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 State correctional facility, many of which are not activities that are even performed by the general public, let alone ones to which the public would be equally exposed.

In *City of Springfield v. Illinois Workers' Comp. Comm'n*, the Appellate Court issued a favorable decision in a repetitive case to a claimant in which the claimant's work was "varied" but also "repetitive" or "intensive" in that he used his hands, albeit for different task, for at least five (5) hours out of an eight (8) hour work day. *City of Springfield v. Illinois Workers' Comp. Comm'n*, 388 Ill.App.3d 297, 901 N.E.2d 1066, 327 Ill.Dec. 333 (Ill.App. 4th Dist., 2009). As was noted by the Commission and reiterated in the Appellate Court decision in *City of Springfield v. Illinois Workers' Compensation Comm'n*, "while [claimant's] duties may not have been 'repetitive' in a sense that the same thing was done over and over again as on an assembly line, the Commission finds that his duties required an intensive use of his hands and arms and his injuries were certainly cumulative." *Id.*

The Commission has also recognized that a claimant's employment may not be the only factor in his or her development of a repetitive compressive peripheral neuropathy. Much like Petitioner, the claimant in *Three D Discount Store v. Indus. Comm'n* was overweight and being treated for a diabetic condition at the time his symptoms increased and required attention, but the Appellate Court affirmed the Commission's award of benefits for the contribution his employment made to his condition of ill-being. *Three D Disc. Store v. Indus. Comm'n*, 198 Ill. App. 3d 43, 46, 556 N.E.2d 261, 263 (1989).

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). Even when the only injury that occurs is the acceleration of the need for surgery, a causal relationship is established that entitled a claimant to benefits. *Schroeder v. Illinois Workers' Comp. Comm'n*, 2017 IL App (4th) 160192WC, 79 N.E.3d 833.

The Arbitrator finds Petitioner a credible witness in her own behalf. She described her duties in both writing and testimony, and Respondent's representative, Major Wright, corroborated her testimony. (T.32-36) Based upon the above standard and the totality of the evidence in the record, the Arbitrator finds that Petitioner sustained her burden in proving that her job duties were forceful and repetitive.

The Arbitrator finds the opinion of Dr. Bradley more credible than that of Dr. Stewart, as Dr. Bradley's opinion is in harmony with both the evidence and the law. Dr. Stewart gave no consideration to Petitioner's job history, even though the law in Illinois requires such consideration. (RX7, p. 39) *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, 293 Ill.Dec. 313, 828 N.E.2d 283, 287 (2005) (over 30 years); *Oscar Mayer*, 176 Ill.App.3d at 608, 126 Ill.Dec. 41, 531 N.E.2d at 174–75 (15 years); *City of Springfield, Illinois v. Illinois Workers' Compensation Comm'n*, 388 Ill.App.3d 297, 300–01, 327 Ill.Dec. 333, 901 N.E.2d 1066, 1069–70 (2009) (approximately 8 years); *Peoria County*, 115 Ill.2d at 527, 106 Ill.Dec. 235, 505 N.E.2d at 1027 (6 years). The Arbitrator also finds it significant that Dr. Stewart did not consider Petitioner's history as a gallery officer. (RX6; RX7) This, coupled with the evident bias he demonstrated in his report and deposition, damages his credibility.

Dr. Bradley not only considered Petitioner's entire job history in harmony with the law, he also acknowledged that work injury need not be the sole factor in the condition of ill-being. (PX3; PX9) Dr. Bradley credibly stated that although compression neuropathy cases are typically multifactorial, the existence of multiple factors does not change the fact that employment is a contributing factor. (PX9, p.21-22, 73)

The Arbitrator also notes that the Commission has previously determined that the duties of a Graham Correctional Officer contributed to the development of compression neuropathy, even though the claimant did suffer from hypertension. *Honnies v. SOI/Graham Corr. Ctr.*, 20 I.W.C.C. 0643. The Commission also did not demand quantitative proof in contravention of the law. *Id.* In *Honnies*, 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." *Id.*

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.*

Here, Petitioner testified that she spent most of her time as a wing/gallery officer, especially during the period during which she worked overtime to support Respondent during its excessive staff shortage during the pandemic. Given the totality of the evidence, the Arbitrator finds that the record supports a finding that Petitioner's duties aggravated or accelerated her development of compression neuropathies to the extent that they are causally connected to her current condition of ill-being.

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 a claimant's establishment of a causal nexus between injury and illness, employers are responsible for the employees' medical care reasonably required in order to diagnose, relieve, or cure the effects of the claimant's injury. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691 N.E.2d 13 (2000); *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill.App.3d 527, 758 N.E.2d 18 (1st Dist. 2001).

Based upon the above evidence establishing that Petitioner met her burden on the issue of accident and causal connection, the Arbitrator herein awards medical benefits. The Arbitrator notes that even Dr. Stewart agreed that Petitioner's surgical care was reasonable and necessary. (RX6; RX7) Dr. Bradley credibly testified that all of Petitioner's treatment was reasonable, necessary, and causally related to the repetitive work activities that aggravated Petitioner's condition of ill-being. (PX9, p.30-31). The Arbitrator therefore finds that the care provided by Dr. Bradley has been reasonable and necessary. Respondent is therefore ordered to pay the medical expenses contained in Petitioner's group exhibit and shall have credit for any amounts paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue (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 places no weight on this factor.
- ii. **Occupation:** Petitioner currently works as a Correctional Officer at Respondent's Southwestern Illinois Correctional Center facility. (T.7) As she still performs the duties which caused her injury and testified that her symptoms increase with her level of activity (T.19), the Arbitrator places greater weight on this factor.
- iii. **Age:** Petitioner was 46 years old at the time of her injury. She is young and must live and work with her disability for an extended number of years. The Arbitrator places some weight on this factor.
- iv. **Earning Capacity:** There is no evidence of reduced earning capacity. The Arbitrator places no weight on this factor.
- v. **Disability:** As a result of her employment, Petitioner developed symptomatic bilateral carpal and cubital tunnel syndromes that were refractory to conservative care and ultimately required surgery by way of bilateral carpal tunnel releases and bilateral ulnar release and/or neurolysis. (PX3; PX3) Despite the significant improvement in her condition, she still has residual symptoms that increase with her level of activity. (T.18-19) She continues to suffer from weakness and diminished grip strength. (T.18-19) She finds it difficult to open drink caps and has pain while resting her elbows on a table. (T.18-19) Petitioner's testimony is corroborated by her treating records, as Dr. Bradley also noted that she had residual complaints during her final visit on June 20, 2022. (PX3) The Arbitrator therefore places significant weight on this factor.

Based upon the foregoing, the Arbitrator finds that Petitioner suffered serious and permanent injuries that resulted in the 12.5% loss of each hand and the 12.5% loss of each arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC006234
Case Name	Charles Peterson v. State of Illinois - Abraham Lincoln Presidential Library & Museum
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0370
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph L. Moore

DATE FILED: 9/9/2025

/s/Carolyn Doherty, Commissioner

Signature

24 WC 06234

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

CHARLES PETERSON,

Petitioner,

vs.

NO: 24 WC 06234

ABRAHAM LINCOLN PRESIDENTIAL
 LIBRARY / STATE OF ILLINOIS,

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 bills, temporary total disability, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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 Corrected Decision of the Arbitrator filed February 18, 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 06234

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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.

September 9, 2025

O: 09/03/25

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	24WC006234
Case Name	Charles Peterson v. State of Illinois - Abraham Lincoln Presidential Library & Museum
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	Joseph L. Moore

DATE FILED: 2/18/2025

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 11, 2025 4.19%

STATE OF ILLINOIS)
)SS.
 COUNTY OF Sangamon)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 CORRECTED ARBITRATION DECISION
 19(b)**

Charles Peterson

Employee/Petitioner

Case # **24** WC **006234**

v.

Consolidated cases: _____

State of IL - Abraham Lincoln Presidential Library & Museum

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 **12/20/24**. 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, **9/25/23**, 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 **\$53,300.00**; the average weekly wage was **\$1,025.00**.

On the date of accident, Petitioner was **58** 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 **\$4,622.64** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$4,622.64**.

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

ORDER

The Arbitrator finds that the Petitioner has met his burden of proving that he sustained an accident that arose out of and in the course of his employment with the Respondent.

The Arbitrator finds that the Petitioner's current condition of ill-being regarding his left knee is causally related to the 9/25/23 work accident.

The Respondent shall pay all reasonable and necessary medical services as set forth in Petitioner's exhibits and as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$683.33/week for 34 and 3/7 weeks, commencing 4/23/24 through 12/20/24, as provided in Section 8(b) of the Act.

The Arbitrator orders the Respondent to authorize and pay for prospective medical care as recommended by the Petitioner's treating physicians.

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

February 18, 2025

Findings of Fact

The Petitioner is married, has one dependent and currently lives in Springfield, IL. (AT 8-9)

On 9/25/23, the Petitioner was employed by the Respondent as a building and grounds laborer, a position he had held for about 10 months as of that time. That job required the Petitioner to climb, squat, carry, push, cut grass, shovel snow, set up tables for functions, general custodial duties. (AT 9-10)

The Petitioner testified that on 9/25/23 he was setting up for a function when a dolly was brought out carrying tables that needed to be set up for the function. The Petitioner was holding the dolly and as a coworker took one of the tables off of the dolly, the coworker spun the table, and the table struck the Petitioner's left knee. The Petitioner described the table as being approximately a 6–8-foot, round, circular table. After the table hit his knee, the Petitioner noticed a very sharp pain which he described as 10 level, like stabbing on the inner side of his left knee. (AT 10-12)

The Petitioner notified his employer as to what happened and was unable to finish his shift. The Petitioner then, a short time later on the day of the accident, presented to Urgent Care.

When the Petitioner presented to Urgent Care he was complaining of left knee pain that had started two hours earlier when he was hit in the knee by a table. Petitioner described a pain that was dull in nature with moderate intensity. He was able to ambulate and bear weight. X-rays were taken which revealed no acute osseous abnormality. The Petitioner was diagnosed with left knee pain, prepatellar effusion and knee contusion. The Petitioner was instructed to follow up with his primary care physician or with Urgent Care as needed for further treatment. (PX 3, p 4-8) The clinicians at Urgent Care also removed the Petitioner from work for 9/26/23-9/27/23. (PX 3, p 11)

The Petitioner then did not seek treatment for his left knee until 12/15/23. The Petitioner testified that he was trying to tough it out and deal with the ongoing pain in his left knee. The Petitioner also testified that his job with the Respondent was not very hard at all and not very heavy or strenuous. The light nature of his job with the Respondent made it easier for him to deal with the pain and even at times have coworkers help him with heavier tasks. The Petitioner was off work for four days following the accident, the two days that Urgent Care took him off and then he had two regularly scheduled days off after that for a total of four days off before he returned to work for the Respondent. The Petitioner continued to work for the Respondent for a period of time. The Petitioner testified that when he was working for the Respondent that the pain in his left knee never went away. The Petitioner did not have one day after the accident while working for the Respondent when he was pain free in his left knee. (AT 14-16)

In late November, early December 2023, the Petitioner switched jobs and went to work for DCFS, a different agency within the State of Illinois. The Petitioner was hired on by DCFS as a building grounds and laborer which he described as a lateral hire but turned out to be different type of work. The Petitioner testified that this work with DCFS was much heavier. His work was in a warehouse delivering copy paper, filling cabinets, desks, and anything any agency in Illinois would need, he would ship to them, carry it over or deliver it. The Petitioner described one

instance of having to deliver an executive desk by himself in a van. The Petitioner reiterated that the work with the Respondent was easy and a lot of times they would get work done just sitting around whereas the position with DCFS was much heavier and more laborious. (AT 16-17)

The Petitioner also testified that he switched jobs from the library and museum to DCFS because the library and museum was a night job and he would have to work holidays and weekends. The Petitioner's wife also works for the State and she works a day shift. The Petitioner has a special needs daughter that he cares for so it was difficult on the Petitioner and his family to be working opposite shifts of his wife with a special needs daughter at home. (AT 17-18)

Once the Petitioner switched jobs at DCFS he noticed that his knee began to hurt tremendously. He started limping physically and was concerned about being able to handle the new position at DCFS. The Petitioner testified that he did not have any new accidents or injuries while working at DCFS, just the continuing pain which increased once he made the job change. (AT 18)

The Petitioner then returned to medical care and initially saw Dr. DeJong at Springfield Clinic. Petitioner provided a history that he had suffered a **work related injury** on 9/25/23 when his left knee was hit by a table. The Petitioner believed that he had for the most part recovered until a few weeks prior when he switched jobs and now had increased pain in his left knee. Dr. DeJong performed an examination and diagnosed the Petitioner with recurring left knee pain and persistent effusion status post **work related injury** of 9/25/23. At that time, Dr. DeJong recommended the Petitioner undergo a left knee MRI without contrast for evaluation of internal derangement in the setting of persistent pain and effusion from his **work related injury** three months ago. (PX 3, p 12-14)

On 2/4/24, the Petitioner underwent an MRI of the left knee without contrast. The MRI revealed low to mid grade radial tear of the posterior horn/root junction of the medial meniscus; adjacent 6cm cyst lesion between the torn meniscus and PCL; edema along the medial aspect of the knee which could represent sequelae of a mild MCL sprain and/or mild pes anserine bursitis; chondromalacia of the patella femoral compartment. (PX 3, p 21) (PX 4)

The Petitioner then followed up with Dr. DeJong on 2/6/24. The MRI was reviewed with the Petitioner and Dr. DeJong referred the Petitioner to a sports medicine/knee surgical specialist partner for further evaluation and management. The Petitioner was also to continue working on light duty of activity as tolerated. (PX 3, p 23)

The Petitioner was then seen by Dr. Allison Mayfield on 2/26/24. When the Petitioner met with Dr. Mayfield on 2/26/24, he provided an accurate history regarding his 9/25/23 work accident. Dr. Mayfield performed an examination and reviewed the MRI of the left knee. Dr. Mayfield diagnosed a **work related injury** resulting in a tear of the medial meniscus of the left knee. At that time, Dr. Mayfield recommended the Petitioner undergo surgical intervention to address the injuries sustained at the time of the work accident. Dr. Mayfield also placed the Petitioner on light duty of no squatting or lifting over 30 pounds as tolerated. (PX 3, p 28-31)

Subsequently, on 4/9/24 the Respondent sent the Petitioner for an Independent Medical Examination with Dr. Timothy Farley. (RX 2)

The Petitioner then followed up with Dr. Mayfield on 4/18/24. Dr. Mayfield continued to recommend surgery which was now being disputed by the Respondent based upon the IME report of Dr. Farley. Dr. Mayfield also maintained light duty restrictions on the Petitioner at that time. (PX 3, p 41)

Shortly thereafter Dr. Mayfield went out on maternity leave. As a result, the Petitioner switched his care to Dr. Brett Wolters with the Springfield Clinic. (AT 22)

The Petitioner initially saw Dr. Wolters on 5/17/24. The Petitioner again provided a consistent history regarding his work accident. Dr. Wolters performed an examination, reviewed prior x-rays and the prior MRI with the Petitioner. At the conclusion of his examination, Dr. Wolters, just as Dr. Mayfield did, recommended arthroscopic surgery. (PX 3, p 46-47)

The Petitioner underwent a preoperative clearance examination on 8/2/24. (PX 3, p 119)

On 8/29/24, Dr. Wolters performed surgery. Pre and postoperative diagnosis was left knee posterior root medial meniscus tear. The procedure performed was a left knee arthroscopic assisted posterior root medial meniscus repair and medial collateral ligament lengthening. (PX 3, p 116-117)

The Petitioner then began postoperative physical which also was done at Springfield Clinic and that began on 9/5/24. (PX 3, p 112)

The Petitioner saw NP Elizabeth Chaney with Dr. Wolters' office on 9/6/24 following surgery. The Petitioner was in a wheelchair and using a brace as well as crutches when needed. The Petitioner stated that his pain is uncontrollable after physical therapy. It was recommended the Petitioner be continued non-weight bearing until six weeks postoperatively and changes would be made to his pain medication. Petitioner was continued off of work. The Petitioner did continue in physical therapy. (PX 3, p 111-112)

The Petitioner then saw Dr. Wolters in follow up on 10/4/24. At this time, the Petitioner indicated that his pain was reasonably controlled. He had been attending physical therapy and the swelling was decreasing. Petitioner was gradually getting back his range of motion. The Petitioner was to transition into more weight bearing and was provided a loading brace. The Petitioner continued to be off of work. (PX 3, p 94)

The last time the Petitioner was seen prior to trial by NP Chaney on 11/5/24. Petitioner expressed concern about his leg jumping around at nighttime. He described pain at a 7/10. Petitioner is continuing to do physical therapy twice a week. It was recommended for conservative management of the left knee with ongoing physical therapy. Continuing weight bearing activities as tolerated with the unloader brace. Updated work status was given and the Petitioner was continued off of work. (PX 3, p 62)

The Petitioner testified at trial that he is still on light duty restrictions which as a result are keeping him off of work.

The Petitioner is still in physical therapy and is still under the care of Dr. Wolters. The Petitioner has follow ups with Dr. Wolters in the future.

The Petitioner testified and the evidence shows that he was paid TTD benefits from the Respondent covering 2/27/24-4/22/24. This timeframe when the Petitioner when the Petitioner was paid TTD benefits he had already made his job switch to DCFS. The Petitioner has been off of work without benefits from 4/23/24 through the time of trial.

Before the Petitioner's 9/25/23 work accident, he was not seeking any medical treatment for his left knee. The Petitioner was not taking any medications or on any work restrictions for his left knee before the accident. Petitioner had never had an MRI or been told that he needed surgery for his left knee before the accident. Prior to the accident, the Petitioner was able to perform all of his assigned job tasks without any issues regarding his left knee. (AT 27-28)

The Respondent then called Timothy Ladage to testify at trial. Mr. Ladage is employed by the Abraham Lincoln Presidential Library and Museum where he has worked for just over four years. Mr. Ladage is a building grounds laborer for the Respondent. Mr. Ladage testified that he was working the same set up as the Petitioner on the day the Petitioner was injured. Mr. Ladage essentially confirmed exactly what the Petitioner had testified to, that a co-employee was pulling a table off of the dolly and when it hit the ground it struck Mr. Peterson's left leg. Mr. Ladage was aware that the Petitioner went to Urgent Care the evening of the accident. Mr. Ladage also confirmed that he saw the table hit the Petitioner's left knee but he described that it hit the Petitioner "soft" and it brushed his knee more than hit his knee. (AT 57-64)

On cross-examination, Mr. Ladage confirmed that he did see the accident and believed that he was standing maybe 3-5 feet away from the Petitioner at the time the accident occurred. Despite testifying that he saw the accident and was standing next to the Petitioner at the time it happened, he did not recall where he was standing in relation to the Petitioner, whether than be in front of him, behind him, to the left or to the right. Mr. Ladage estimated that he may have been on the side of the Petitioner but did not know which side. Mr. Ladage did not know which knee of the Petitioner's knees was hit by the table. Mr. Ladage did confirm that the tables being moved at the time of the accident are pretty large, possible 6-7 feet in circumference. Mr. Ladage estimated that the tables weighed between 20-30 pounds and are made of wood, with metal legs that fold in and out.

Mr. Ladage confirmed that after the table hit the Petitioner's knee that he did see the Petitioner bend over and grab his knee. At that point, Mr. Ladage actually took over for the Petitioner to help set up the tables. Mr. Ladage confirmed that after the table hit the Petitioner's knee, that the Petitioner voiced to Mr. Ladage that his knee was in pain.

Mr. Ladage confirmed that before his accident the Petitioner had never made any complaints regarding his left knee. Mr. Ladage confirmed that before this accident the Petitioner was able to do his job without issue. (AT 65-69)

The evidence deposition of Dr. Brett Wolters was conducted on 8/30/24. Dr. Wolters is a board certified orthopedic surgeon with a certificate of added qualification in sports medicine. He has been practicing with Springfield Clinic for 17 years. Dr. Wolters practice primarily consists of treating hips, knees and shoulders and states that he focuses more on the knee than anything else and he also does some general orthopedics as well. Dr. Wolters performs approximately 1000 surgeries annually and about half of those are knee surgeries. Dr. Wolters treats both traumatic and degenerative knee conditions. Dr. Wolters testified that based upon the history provided by the Petitioner as well as his ongoing symptoms that it was more likely than not that the Petitioner's work injury of 9/25/23 resulted in the root tear of the medial meniscus noted at the time of the MRI and in surgery. (PX 6, p 17)

The evidence deposition of Dr. Timothy Farley was taken on 9/17/24. Dr. Farley is a board certified orthopedic surgeon licensed in the State of Missouri. Dr. Farley is subspecialized after doing a fellowship in knee, shoulder and elbow surgery. Dr. Farley testified that he performs multiple hundreds of surgeries per year which break down to about 40% knee, 40% shoulder and 20% elbow. Dr. Farley performed an Independent Medical Examination at the request of the Respondent on 4/9/24. Dr. Farley believed that there was evidence of underlying degenerative arthrosis within his knees bilaterally and that the left knee demonstrated mild varus alignment with MRI findings of tibial subchondral edema as well as fissuring in the patella femoral articulation. Dr. Farley testified he did not believe there was a causal relationship between the Petitioner's current condition and his accident as arthrosis in and of itself is a common finding and is prevalent among the American population with aging as well as positively related to obesity. Dr. Farley did not believe that the meniscus tear was caused by the reported accident because the Petitioner was not hit by the edge of the table but was instead struck by the flat side of the table which Dr. Farley concluded would be moving slower than the edge of the table for sure.

Dr. Farley was not provided any surveillance video or photographs. It is noted that the Respondent subsequently attempted to admit surveillance documentation into evidence but they failed to provide that to their own IME doctor. Dr. Farley did not review any video of the accident itself. Dr. Farley was not provided any records after 2/26/24 when the Petitioner saw Dr. Mayfield. Dr. Farley has not reviewed any of the records of Dr. Wolters nor his evidence deposition. Dr. Farley was not provided the films of the MRI, he was only provided the MRI report.

Dr. Farley confirmed that Dr. Mayfield had opined that the Petitioner had a complete tear through the posterior root horn junction of the medial meniscus with meniscus extrusion in the small focal area of subchondral edema consistent with **acute injury** and disruption of the medial root. Dr. Farley confirmed that Dr. Mayfield stated in her records that the Petitioner suffered an **acute injury** in the left knee from the work accident.

Dr. Farley confirmed that the Petitioner was working full duty leading up to the accident. Dr. Farley was not provided any evidence that the Petitioner had suffered from any left knee issues before this accident. Dr. Farley confirmed that prior to this accident the Petitioner was not taking any medication or had any sort of recommendation for treatment or surgery regarding his left knee.

Dr. Farley confirmed that the history provided by the Petitioner has been consistent throughout this case. There is no evidence of any intervening accidents. Dr. Farley did not believe that the Petitioner was magnifying his symptoms at the time he examined the Petitioner. Dr. Farley confirmed that any condition in the Petitioner's left knee that preexisted the accident by all evidence that he was aware of was asymptomatic. Dr. Farley confirmed that swelling can be a sign of an acute injury, and it was noted that the Petitioner had swelling in his left knee when he presented to Urgent Care on the date of the accident.

Up to 5% of Dr. Farley's current practice is dedicated to performing IMEs. Dr. Farley testified that almost all of his IMEs are done at the request of insurance companies or Respondents. Dr. Farley performs usually 2 IMEs per week and charges \$1500.00 per IME. Dr. Farley has performed more than 5 IMEs at the request of the State of Illinois in the past. Dr. Farley also has his deposition taken about 1.5 times per month and charges \$1500-\$1750.00 for his testimony.

Conclusions of Law

Accident

The Arbitrator finds the Petitioner met his burden of proving that he sustained an accident that arose out of and in the course of his employment with the Respondent on 9/25/23. The Arbitrator notes that the Petitioner testified that on 9/25/23 as he and co-employees were setting up for an event that a table was taken off of a dolly and swung by a co-employee, striking Petitioner's left knee, which resulted in immediate pain and swelling. The Petitioner immediately reported the incident to his supervisor and presented for medical care the same day, providing a consistent history then and throughout his care. The Arbitrator also notes that the Respondent's witness confirmed the Petitioner's testimony that the accident occurred and in the same manner that the Petitioner testified to. The Arbitrator also notes that a Form 45 was prepared the following day with a consistent history as to how the accident occurred. (RX 1) The Arbitrator further notes that the Petitioner further admitted into evidence an accident report on the day of the accident confirming the accident itself.

The only evidence that exists in the record is that the accident did occur and that it arose out of and in the course of the Petitioner's employment with the Respondent.

Causation

The Arbitrator finds that the Petitioner has met his burden of proving that his current condition of ill-being is causally related to the 9/25/23 accident regarding his left knee. The Arbitrator notes that there is no evidence that prior to his accident the Petitioner was having any left knee issues, had sought any treatment for his left knee, was taking prescriptions for his left knee. There is no evidence of any MRI or recommendation for surgery regarding the Petitioner's left knee before this accident. The Petitioner sustained a compensable accident, reported it to his employer immediately and sought care the same day. The Petitioner has provided a consistent history of his accident to all providers as well as the Independent Medical Examiner and at trial in his testimony. There is no evidence of any pre-accident issues regarding the Petitioner's left knee.

The Arbitrator also notes that the Petitioner presented with pain and swelling to Urgent Care a couple of hours after his accident on 9/25/23. (PX 3, p 4)

The Arbitrator also notes that Dr. DeJong diagnosed the Petitioner on 12/15/23 with a **work related injury**, left knee pain, left knee injury, left knee effusion. (PX 3, 12)

On 2/6/24, Dr. DeJong diagnosed **work related injury**, tear of the medial meniscus of the left knee, chondromalacia of left patella. (PX 3, p 23)

On 2/26/24, Dr. Mayfield diagnosed **work related injury**, tear of the medial meniscus of the left knee. Dr. Mayfield reviewed the Petitioner's 2/2/24 MRI to reveal a complete tear through the posterior root horn junction of the medial meniscus with meniscus extrusion, with a small focal area of subchondral edema **consistent with acute injury and disruption of the meniscus root**.

The Arbitrator further notes that Dr. Wolters testified via evidence deposition that based upon the history that the Petitioner had provided to him, which was unrebutted in the evidence before the court, that a causal connection existed between the Petitioner's left knee condition which he performed surgery on and the work accident.

The Arbitrator notes that all Petitioner's treating physicians in this case have opined that a causal connection exists between the work accident and the Petitioner's left knee condition. The only physician to dispute causation is the Respondent's IME, Dr. Farley. The Arbitrator is not swayed by the opinions of Dr. Farley and concludes that the evidence admitted at the time of trial is consistent with the opinions of the Petitioner's treaters, including Dr. DeJong, Dr. Mayfield, and Dr. Wolters.

The Petitioner has met his burden of proof on the issue of causation.

Medical Bills

Based upon the Arbitrator's findings on the issues of accident and causation, the Arbitrator orders the Respondent to pay all medical bills admitted into evidence by the Petitioner at the time of trial.

TTD

Based upon the Arbitrator's findings on accident and causal connection as well as the Petitioner last being paid temporary total disability benefits through 4/22/24, and being continued off of work or on work restrictions that were not accommodated from 4/23/24 up through the time of trial, the Arbitrator finds that the Petitioner is entitled to payment of temporary total disability benefits. The Respondent shall pay Petitioner temporary total disability benefits of \$683.33/week for 34 and 3/7 weeks, commencing 4/23/24 through 12/20/24, as provided in Section 8(b) of the Act.

Prospective Medical Care

The Arbitrator in addition to ordering the Respondent to pay all past related medical bills for the Petitioner's left knee, orders the Respondent to authorize and pay for the ongoing medical care the Petitioner is having for his left knee condition including all postoperative care as recommended by Dr. Wolters and the Petitioner's treating physicians.

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ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC008139
Case Name	John Odle v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0372
Number of Pages of Decision	13
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 9/10/2025

/s/Frank Soto, Commissioner

Signature

22 WC 08139

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF SAGAMON)

☒ 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

John Odle,

Petitioner,

vs.

NO: 22 WC 08139

State of Illinois - Graham Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of accident, medical expenses, permanent partial disability, temporary total disability, nature and extent, causal connection, 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 07, 2024 is hereby affirmed and adopted.

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

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

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

22 WC 08139

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September 10, 2025

O: 09/03/25

FJS/as

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	22WC008139
Case Name	John Odle v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 6/7/2024

/s/ Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

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



June 7, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
 COUNTY OF SANGAMON)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

JOHN ODLE, JR.,
 Employee/Petitioner

Case # **22** WC **008139**

v.

Consolidated cases: _____

STATE OF ILLINOIS/GRAHAM CORR. CTR.,
 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 **April 29, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ 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 21, 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 **\$68,294.87**; the average weekly wage was **\$1,313.36**.

On the date of accident, Petitioner was **31** 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 of - for TTD, \$- for TPD, \$- for maintenance, and - for other benefits, for a total credit of **\$0**.

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

ORDER

Respondent shall pay all medical charges related to this claim, for Petitioner's reasonable and necessary medical treatment, as outlined in Petitioner's Exhibit 1. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Respondent shall pay Petitioner temporary total disability benefits of **\$875.57/week** for **1 and 6/7** weeks, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$788.02/week** for **66.45** weeks, because the injuries sustained caused a **7.5% loss of use to the right hand, a 7.5% loss of use to the left hand, a 7.5% loss of use of the right arm, and a 7.5% loss of use to the left arm**, as provided in § 8(e) of the Act.

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

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



Signature of Arbitrator

June 7, 2024

FINDINGS OF FACT

Petitioner's Testimony and Work History

Petitioner testified that he became a Correctional Sergeant on February 1, 2024. (T.9) From January of 2013 through January of 2024, Petitioner worked as a Correctional Officer. (T.9-10) Before his tenure with the State, Petitioner was a CNC operator running a computer-aided drafting machine. (T.10)

Petitioner prepared a work history and job description detailing his upper extremity use in the course of his job duties. (PX6) With regard to the lifting he performs, Petitioner describes that his daily routine includes lifting, pushing, and pulling correspondence boxes filled with books and paperwork, property boxes filled with clothing items and food, and mattresses during searches. *Id.* He described moving heavy carts with stacks of trays to feed inmates. *Id.* He described turning keys to open doors and chuckholes on a daily basis. *Id.* He estimated at trial that he might turn an average of 150 locks per day. (T.23-24) In the hand-written job description, he also described performing data entry both typing and hand-written to complete log books every 30 minutes and complete paperwork. (PX6) He testified at trial that 70% of his time as a gallery office was spent working on the housing wings. (T.11) His remaining time is spent on his designated break and in the control unit. (T.11-12) He confirmed that he bar raps, searches cells during shakedowns, handles and searches property boxes, turns keys, operates cell doors, and restrains inmates on a daily basis. (T.10-11)

In the course of his job duties, Petitioner developed symptoms of continuous, right-greater-than-left pain in his elbows and numbness, tingling, and fatigue in his fingers that caused him to drop things and interfered with his sleep. (T.12, 16) Petitioner is right-hand dominant, but he keys with both hands. (T.12, 24) He also testified that some keys are difficult and require force to turn. (T.27-28) On occasion, he even attempts to open the locks with different keys. (T.27) Petitioner testified that during the pandemic, his "workload increased tremendously", along with his symptoms, because the amount of key turning increased, and the facility lost inmate help and while dealing with staffing shortage. (T.13-14) He stated that the facility remains short-staffed by roughly 70 officers. (T.13) He does not suffer from gout, hypothyroidism, rheumatoid arthritis, or diabetes. (T.12-13) He filed no previous workers' compensation claims and suffered no prior injuries to his arms. (T.15-16)

On cross-examination, acknowledged adopting a new routine of lifting weights within the last year and formerly participating in motocross. (T.25-27) He was not participating in these activities during the COVID pandemic when his symptoms increased. (T.26)

Testimony of Major Trevor Wright

Major Wright was present on behalf of Respondent, but called to testify by Petitioner. (T.29) He testified he is familiar with Petitioner and characterized him as a good employee. (T.29) He heard Petitioner's testimony in its entirety and testified that there was nothing inaccurate in his testimony. (T.30) He corroborated Petitioner's testimony that inmate assistance vanished during the pandemic and that the facility was and remains short-staffed. (T.30)

Medical Treatment

On February 21, 2022, Petitioner presented to the office of Dr. Matthew Bradley with right worse than left elbow hand and wrist pain. (PX3, 2/21/22) He indicated that his right elbow pain was constant and reported he had not had any treatment date for his pain. *Id.* His middle and ring finger had the most significant numbness on either hand. *Id.* He denied hobbies or activities that required repetitive motion and did not have a history of diabetes, or

thyroid disease. *Id.* Dr. Bradley noted that Petitioner had worked as a correctional officer with the Department of Corrections since January 2013. *Id.* He reviewed a job description completed by Petitioner that described a daily routine of lifting correspondence boxes filled with books and paperwork, pushing carts with property boxes and mattresses, repetitive key turning, opening cell doors, removing cuffs from inmates, typing, and utilizing computers. *Id.*

Examination of the bilateral elbows showed tingling along the ulnar nerve distribution and positive Tinel's bilaterally. *Id.* Exam of the bilateral hands and wrists showed numbness and tingling over the median nerve distribution, decreased sensation to light touch over the ulnar nerve distribution, positive Tinel's, and positive Phalen's bilaterally. *Id.* X-rays of the bilateral hands, wrists, and elbows showed no acute fracture or significant degenerative changes. *Id.*

Dr. Bradley's assessment was bilateral cubital and carpal tunnel syndrome, with the cubital tunnel being more symptomatic than the carpal tunnel. *Id.* He noted that Petitioner's symptoms had gone from intermittent to nearly chronic and that Petitioner was experiencing grip weakness. *Id.* He noted Petitioner was currently utilizing anti-inflammatory medication, and he encouraged Petitioner to continue same. *Id.* A home exercise program was demonstrated and braces were recommended for nighttime use. *Id.* An EMG and nerve conduction study was ordered to further evaluate the degree of Petitioner's compression. *Id.* Dr. Bradley opined that the chronic, repetitive use of Petitioner's hands during the previous nine years contributed to his development of cubital and carpal tunnel syndrome. *Id.*

An EMG and nerve conduction study was performed by Dr. Ravi Yadava on February 21, 2022, and confirmed to the presence of moderate bilateral carpal tunnel syndrome, moderate bilateral Guyton's canal syndrome and bilateral cubital tunnel syndrome, which was noted to be moderate on the right and mild on the left. (PX4)

Petitioner returned to Dr. Bradley on March 17, 2022, and reported no change in his symptoms. (PX3, 3/17/22) He continued to report that the right extremity was worse than the left with no significant relief from bracing. *Id.* Dr. Bradley discussed the EMG and nerve conduction study findings of bilateral carpal and cubital tunnel syndrome and indicated that Petitioner had tried and failed multiple non-operative treatment measures, including a home exercise program, night bracing, and anti-inflammatory medication, all without any significant change in his symptoms. *Id.* Surgical intervention was discussed, and Petitioner wished to proceed with same. *Id.*

On May 25, 2022, Petitioner underwent a right ulnar nerve neurolysis and decompression at the elbow and a right carpal tunnel open decompression with Dr. Bradley. (PX5, 5/25/22) Intraoperatively, the ulnar nerve was noted to be encased in a significant amount of scar tissue and adhesions. *Id.* The nerve was very tight and constricted at the level of the ligament, and the ligament was released approximately four to five millimeters. *Id.* Dr. Bradley indicated the nerve was very tight distantly as well. *Id.* He traced the nerve all the way distally to where it entered the fascia, and the fascia was released approximately a centimeter. *Id.* At the wrist, Dr. Bradley noted that the nerve was flattened as it went to the carpal tunnel and that the transverse carpal ligament was thickened. *Id.* Same was released proximally and distally. *Id.*

At Petitioner's June 2022 postoperative appointment with Dr. Bradley, he reported that his right hand and elbow symptoms had improved; however, his left upper extremities were unchanged, and Dr. Bradley recommended surgical intervention for same. (PX3, 6/13/22)

On June 15, 2022, Petitioner underwent a left open carpal tunnel decompression and left neurolysis at the elbow with Dr. Bradley. (PX5, 6/15/22) Intraoperatively, at the level of the ulnar nerve, Dr. Bradley found adhesions and scar tissue at the posterior medial epicondyle. *Id.* The fascia was incised approximately one centimeter longitudinally in order to give the nerve increased space. *Id.* At the carpal tunnel, Dr. Bradley noted that the

transverse carpal ligament was thickened and opened up a little over a centimeter upon release. *Id.* He noted that the median nerve was mildly flattened as it went into the carpal tunnel, and same was gently retracted medially and laterally. *Id.* Petitioner was kept off work through June 22, 2022. (PX3)

At Petitioner's July 7, 2022 appointment with Dr. Bradley, he reported that his preoperative symptoms had significantly improved. (PX3, 7/7/22) Petitioner felt that he had recovered enough to return to full, unrestricted work. *Id.* Dr. Bradley felt it was safe for him to do so and provided him a full duty work release. *Id.* He encouraged Petitioner to continue his home exercise program and use Tylenol and/or ibuprofen as needed. *Id.* Petitioner was placed at maximum medical improvement. *Id.*

Petitioner testified that he is happy he underwent the procedures that "helped [him] tremendously," however, he still has residual symptoms. (T.17) When he finishes a shift or gets mandated to work a double shift, he experiences tenderness, fatigue, and diminished grip strength. (T.18) His symptoms increase with his level of activity. (T.18)

Dr. Patrick Stewart: Section 12 Exam and Testimony

Pursuant to Section 12, Respondent had Petitioner examined by Dr. Stewart, who authored a report on May 23, 2022, in which he ultimately concluded that he did not believe that Petitioner's condition was any way related to his employment. (RX2, Dep. Exh. 2) He reviewed documents provided by Respondent and records of Petitioner's treatment, and he noted Petitioner was, at that time, working in a receiving wing lifting a lot of property boxes and experiencing exacerbation of his symptoms as a result thereof. *Id.* He noted multiple positive orthopedic tests in the right upper extremity examination findings, including positive right wrist Tinel's test and right elbow findings of tenderness over the medial epicondyle and positive Tinel's, flexion test, and compression tests. *Id.* On the left he noted positive elbow testing over the medial epicondyle and ulnar nerve and positive wrist testing of the median nerve with compression and reverse Phalen's. *Id.*

Dr. Stewart agreed with the diagnosis of bilateral carpal and cubital tunnel syndromes, but did not find a causal relationship between Petitioner's symptoms or conditions and his employment. *Id.* He noted Petitioner's elevated BMI placed him at increased risk for developing his conditions, but he described the amount of Petitioner's work activity as "nominal" and believed there was sufficient rest between any work activities to mitigate any injury. *Id.*

With regard to the reasonableness and necessity of Petitioner's care, he agreed that Petitioner was not at maximum medical improvement. *Id.* He believed that the conservative care received up to the date of his examination, with the exception of the x-rays, was reasonable, and that continued conservative care for Petitioner's cubital tunnels was reasonable. *Id.*

Dr. Stewart was deposed by the parties, and his testimony on direct examination was consistent with his opinions as expressed in his report. (RX2) He testified that Petitioner did not reference any hobbies that would put him at risk for injury and further noted that "most hobbies are not that intense or not employed on that frequent a basis for that prolonged period" to place the patient at increased risk for injury. *Id.* at 12-13. In addition to increased body mass index, he testified that if Petitioner suffered from untreated sleep apnea, this too would be a contributing factor. *Id.* at 21.

Dr. Stewart testified that Petitioner specifically referenced key turning and property box moving as the most problematic of his duties. *Id.* at 23. However, he did not feel that Petitioner's job was forceful based on his personal visit to the facility. *Id.* at 22-23. He stated the keys he used were not a "large, overbearing, [or] heavy", and he described them as essentially looking like a house key. *Id.* at 23-24. He also stated that any difficult locks

would be addressed by the locksmith. *Id.* at 25. He thus believed that, even if one officer opened every cell on the X wing every day, it would not contribute to, aggravate, or accelerate Petitioner's condition. *Id.* at 26-27. He also did not believe transfers occurred frequently enough for property box lifting to be a contributing factor. *Id.* at 26-27.

On cross-examination, Dr. Stewart testified that he did not think Petitioner's caution exhibited during his examination was reasonable; it made him feel like Petitioner had something to hide. *Id.* at 36-37. Dr. Stewart noted that the job description provided to him for Graham Correctional Center was prepared by CMS. *Id.* at 38-39. Dr. Stewart did not review any job descriptions prepared by Petitioner. *Id.* at 39. When asked how many doors he opened when he toured Respondent's facility, he guessed eight to ten. *Id.* at 48. He stated he did not have difficulty or use force to open any of the doors or locks. *Id.* at 51. He did not know how heavy the property boxes were Petitioner was required to move, and he did not attempt to move or lift any during his tour. *Id.* at 53-54.

Dr. Stewart agreed that carpal and cubital tunnel syndrome develop over time; but he did not believe Petitioner's entire work history was relevant, because "[Petitioner] didn't indicate that he ever had symptoms related to previous activities, previous employment, previous injury." *Id.* at 55. He testified that he has never found the duties of any Graham Correctional Officer or any officer for any of Respondent's other facilities to contribute to the development of repetitive injury. *Id.* at 59-60.

Dr. Stewart admitted that he had no other factor to which he could relate Petitioner's condition outside of elevated BMI. *Id.* at 61. Even so, he could not specifically attribute Petitioner's condition to this sole factor, as he believed that 50% of compression neuropathy cases were "idiopathic" or without specific cause. *Id.* at 61-62. He stated, "Having an elevated BMI puts you at an increased risk. It doesn't say definitively that's why you got it. It puts you at increased risk, and we weigh that against other things, other things that put you at increased risk, and if there's not, well, then that's more likely than nothing, but is it a chance that we don't have the answer, that it's idiopathic, yes, there's a very good chance of that." *Id.* at 62.

Dr. Stewart testified that Petitioner's conservative care was reasonable and acknowledged that if Petitioner remained symptomatic after conservative care, he would be a surgical candidate. *Id.* at 43-44.

Dr. Matthew Bradley Testimony

Dr. Bradley testified that he treats patients who suffer from carpal and/or cubital tunnel syndrome on a near daily basis. (PX8, p.5-6) He acknowledged that Petitioner's obesity was a comorbid risk factor for his conditions, but he also stated that Petitioner's duties as a Correctional Officer were occupational risk factors. *Id.* at 8-9, 12-14. He personally reviewed the job description written by Petitioner in addition to the records in Petitioner's case and discuss these with him in his clinic. *Id.* at 10-11. He also noted that he had treated many officers from Graham and was very familiar with the jobs at the facility. *Id.* at 12. In reviewing the evidence and drawing from his experience, he found that Petitioner's work over the last decade "cumulatively all added up to eventually give him symptomatic carpal and cubital tunnel." *Id.* at 12-13. He stated:

"... Certainly, when you look at carpal and cubital tunnel, these are cumulative conditions. They don't just happen all at once. So having said that, certainly, car wrecks and trauma can happen. But in – in this particular case, it's my opinion that his nine years of – working in the various job descriptions and various areas, doing the various things he needed as a correctional officer for nine years, all added together over that nine years, contributed to the development of carpal and cubital tunnel." *Id.* at 16.

Dr. Bradley noted that compression neuropathy cases are typically multifactorial. *Id.* at 16-17. The existence of multiple factors, however, did not change the fact that employment was a contributing factor. *Id.* at 16-17. He explained:

“So his BMI, we know, contributed. If he had undiagnosed blood pressure, undiagnosed sleep apnea, undiagnosed thyroid problems, you know, that would be another risk factor, which just would push him to be more susceptible to developing carpal and cubital [tunnel]. So you put two, or three, or four, risk factors all together, and they all – they all contribute. They all add together and contribute. So if he was found to have other risk factors, it wouldn’t change my causation. I think it would just further kind of strengthen my opinion that these – these activities certainly contributed to it.” *Id.* at 17.

He further testified that the treatment he provided for Petitioner’s was reasonable and causally related to his work-related conditions. *Id.* at 21-22, 24-25.

Dr. Bradley testified that he strongly disagreed with Dr. Stewart’s opinion that Petitioner’s employment did not contribute to the development of his conditions. *Id.* at 22-23. He explained:

“Well, because we know that repetitive use of the – the wrist and the elbow, such that these correctional officers do hundreds and hundreds of times a day, we know that they additively over years contribute to the development of carpal and cubital tunnel syndrome. I’m not real sure, you know, in reading Ms. – you know, in Dr. Stewart’s note he says, “There is no repetitive forceful flexion or extension,” but of these 50 or so correctional officers I’ve had, everyone [sic] of them states that these doors, they don’t just slide open. Quite frequently, there’s significant force. As a matter of fact, a lot of them describe having to put their feet on these doors and having to pull them open. So I – I just – I don’t know whether Dr. Stewart doesn’t completely understand the amount of force that is necessary or not, but all of these correctional officers tell me a very different story than what Dr. Stewart documented in all of his independent medical evaluations.” *Id.* at 23.

On cross-examination, Dr. Bradley was asked about the specifics of Petitioner’s job duties, including the types of keys used by Petitioner. *Id.* at 34-39. He stated that it was “not so much the type of the key as – as it is the repetitiveness or the – the ease of the lock.” *Id.* at 36. He also noted that although Petitioner’s job was varied, it was repetitive. *Id.* at 37-38, 42. He stated that rather than there being one particularly offending activity, “most of these things added up for the carpal tunnel syndrome.” *Id.* at 42. He also testified that there is no specific threshold for determining whether an activity was causative or contributory for repetitive injury. *Id.* at 44. When asked on redirect examination whether he felt Petitioner’s carpal and cubital tunnel syndrome were idiopathic, he stated, “No. I think – we use the term idiopathic when we don’t have a good explanation, when we can’t come up with any reason for it. I don’t think that’s the case with [Petitioner]. I think we have a very good explanation. He certainly has the risk factor of an elevated BMI and the risk factor or repetitive use of his hands and elbows for at least the nine years at Graham. So I don’t think idiopathic would be an appropriate [diagnosis] in [Petitioner’s] case.” *Id.* at 63.

CONCLUSIONS OF LAW

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

Petitioner provided a detailed description of his repetitive job duties for Respondent. Respondent’s representative, Major Wright, confirmed that Petitioner’s description of his duties was accurate. (T.29-30) The Arbitrator observed the Petitioner and found him to be sincere, consistent and credible.

Respondent's examiner, Dr. Stewart, found that Petitioner had only one comorbid risk factor, and opined that Petitioner's condition was idiopathic and unrelated to his job duties. (RX2, p.61-62) Dr. Stewart did not review the job description prepared by Petitioner. *Id.* at 39. When asked how many doors he opened when he toured Respondent's facility, Dr. Stewart guessed eight to ten. *Id.* at 48. Dr. Stewart testified that he did not know how heavy the property boxes were Petitioner was required to move, and he did not attempt to move or lift any during his tour of Respondent's facility. *Id.* at 53-54. Dr. Stewart testified that carpal and cubital tunnel syndrome develop over time, but did not consider Petitioner's entire work history to be relevant. (RX2, p.55)

Petitioner had spent nearly a decade working as a Correctional Officer at the time his injuries manifested. (T.9-10) Petitioner provided ample evidence and un rebutted testimony as to his repetitive work activities, and Petitioner's treating surgeon, Dr. Bradley, found Petitioner's upper extremity conditions to be work-related.

Dr. Bradley considered Petitioner's entire job history, he also acknowledged that work injury need not be the sole factor in the condition of ill-being. Dr. Bradley credibly stated that although compression neuropathy cases are typically multifactorial, the existence of multiple factors does not change the fact that employment is a contributing factor. (PX8, p.16-17) The Arbitrator finds the opinion of Petitioner's treating surgeon, Dr. Bradley, to be persuasive on the issue of causation as he had a more accurate and complete understanding of Petitioner's job duties and history, and was therefore in the best position to judge the cause of Petitioner's complaints.

Given the totality of the evidence, the Arbitrator finds that Petitioner has met his burden in proving that his repetitive job duties caused an injury manifesting on or about February 21, 2022, arising out of and in the course of his employment. Moreover, in reliance on the credible testimony of the Petitioner, supported by Major Wright, the persuasive opinion of Dr. Bradley, and the record taken as a whole, the Arbitrator finds that the Petitioner has met his burden and established that his current condition of ill-being in his bilateral arms, and hands/wrists is causally connected 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? The Arbitrator finds as follows:

Incorporating the above, the Arbitrator finds Petitioner is entitled to medical benefits. The Arbitrator notes that Respondent's examiner, Dr. Stewart, agreed that Petitioner's condition required care and that Petitioner would be a surgical candidate if he failed conservative treatment. (RX2, p.43-44) Dr. Bradley credibly testified that all of Petitioner's treatment was reasonable, necessary, and causally related to the repetitive work injuries sustained. (PX8, p.21-22, 24-25)

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 1, and shall have credit for any amounts paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

Issue (K): What temporary benefits are in dispute (TTD)? The Arbitrator finds as follows:

Incorporating the above findings, Respondent shall pay Petitioner 1 and 6/7 weeks of temporary total disability benefits.

Issue (L): What is the nature and extent of the injury? The Arbitrator finds as follows:

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 places no weight on this factor.
- (ii) **Occupation:** Petitioner was promoted and works as a Correctional Sergeant at Respondent's facility. The Arbitrator places some weight on this factor.
- (iii) **Age:** Petitioner was 31 years old at the time of his injury. The Arbitrator places more weight on this factor.
- (iv) **Earning Capacity:** As noted, Petitioner has been promoted to Correctional Sergeant for Respondent. The Arbitrator places some weight on this factor.
- (v) **Disability:** As a result of his employment, Petitioner developed bilateral carpal and cubital tunnel syndromes that required surgery by way of bilateral carpal tunnel releases and bilateral ulnar neurolysis. (PX3; PX5) Despite the significant improvement in his condition, he still has residual symptoms. (T.17) When he finishes a shift or gets mandated to work a double shift, he experiences tenderness, fatigue, and diminished grip strength. (T.18) His symptoms increase with his level of activity. (T.18) The Arbitrator notes that Petitioner's symptoms and complaints are consistent with his treating records, as his complaints are appropriate for and proportionate to his injuries. (PX3) Dr. Bradley expected that Petitioner would have some residual or recurrent pain and swelling for which he recommended Petitioner take anti-inflammatories and continue a home exercise program. (PX3) The Arbitrator places significant weight on this factor.

Based upon the foregoing, the Arbitrator finds that Petitioner suffered work injuries that resulted in the 7.5% loss use of each hand, and the 7.5% loss of use of each arm.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC018943
Case Name	Sandra Stearns-King v. Casey's
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0373
Number of Pages of Decision	16
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Nicholas Bigoness
Respondent Attorney	James Kelly

DATE FILED: 9/10/2025

/s/Frank Soto, Commissioner

Signature

20 WC 18943

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 ROCK ISLAND

☒ 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

Sandra Stearns-King ,
 Petitioner,

vs.

NO: 20 WC 18943

Casey's,
 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, medical expenses, permanent partial disability, temporary total disability, causal connection, 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 04, 2024 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$25,900.00. 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.

September 10, 2025

O: 09/03/25

FJS/as

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	20WC018943
Case Name	Sandra Stearns-King v. Casey's
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Nicholas Bigoness
Respondent Attorney	James Kelly

DATE FILED: 6/4/2024

/s/Maureen Pulia, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 4, 2024 5.155%

STATE OF ILLINOIS)
)SS.
 COUNTY OF **ROCK ISLAND**)

☐	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**

SANDRA STEARNS-KING,

Employee/Petitioner

v.

CASEY'S,

Employer/Respondent

Case # **20** WC **18943**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Rock Island**, on **5/9/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **7/3/20**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being *is* as it relates to her left hip is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$17,472.00**; the average weekly wage was **\$336.00**.

On the date of accident, Petitioner was **77** years of age, *married* with **no** 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 **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$00.00**.

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

ORDER

Respondent shall pay reasonable and necessary medical services for petitioner's left hip from 7/3/20 through 8/17/22, 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 \$283.67/week for 15-6/7 weeks, commencing 7/4/20 through 10/22/20, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$283.67/week for 75.25 weeks, because the injuries sustained caused the petitioner a 35% loss of the left leg, as provided in Section 8(e) of the Act.

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

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


Signature of Arbitrator

June 4, 2024

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner a 77 year old kitchen team member, alleges she sustained an accidental injury to her left hip that arose out of and in the course of her employment by respondent on 7/3/20. Petitioner began working for respondent 12 years before her injury. Petitioner testified that she loved her job and was responsible for making the pizzas, sandwiches, chicken, breakfast foods, and other food. She stated that she taught the younger kids how to make the food, and made it fun for them, so that it was not an ordeal for them.

Prior to the alleged accident date, petitioner was seen at ORA Orthopedics on 5/18/20 for evaluation of left lower extremity pain. It was noted that her pain began in February 2020 after having a left total knee arthroplasty. It was also noted that she had received a left trochanteric bursa injection on 5/22/20 and reported no benefit following the injection. She reported that she had done physical therapy, which was beneficial. She reported pain of 9 on a scale of 10 starting at her left lateral hip with radiation to the plantar aspect of the foot following a left S1 pain pattern. She reported numbness and tingling, as well as aching and stabbing pain. She noted that her pain was constant and getting worse. Her symptoms were worsened with standing, bending and lifting. Exercise and movement improved her pain. She noted that her sleep was disrupted by her symptoms. X-rays of her lumbar spine were positive for complete disc collapse from L4-S1, Grade 1 anterolisthesis L5 on S1, hyper-lordotic curvature, and facet arthropathy. It was noted that petitioner was in physical therapy at that time. Dr. Sundar's assessment at that time was lumbar radiculitis of her left lower extremity, and lumbar stenosis with neurogenic claudication. Dr. Sundar recommended an L5-S1 epidural steroid injection.

Petitioner testified that prior to the fall on 7/3/20 she was not experiencing any left hip pain. She stated that any pain prior to the fall was in her left leg and up to her knee.

On 7/3/20 petitioner testified that she arrived at work about 15 minutes early to talk to the Manager, Tracy Stead, about her schedule for the next 2 weeks because she needed to leave early one day each week for her 2 remaining physical therapy sessions related to her bilateral knee surgeries. Petitioner wanted to let Stead know ahead of time so that she did not schedule her for a full day on those 2 dates, like she normally would. Petitioner was scheduled to start work at 9 am that day.

Petitioner testified that the Manager's Office had a lot of boxes in it that were full of paperwork. She stated that the office is right off the kitchen in an area not open to the general public. Petitioner stated that she was careful walking into the office. Petitioner testified that Stead was a real sweetheart. After petitioner let Stead know what days she needed to leave early she went to back out of the office and was being careful not to hit any of the boxes. However, petitioner testified that she did not see one and that is when she fell. She said it was the "god awfullest pain I ever felt in my life I'll never forget it." Petitioner testified that she was helped up

by her coworkers and placed in a chair. Petitioner did not want them to call an ambulance, despite their recommendations that one be called. Petitioner's husband then came and took her to the hospital emergency room. Petitioner testified that after the fall she was clocked in for awhile because she was supposed to work.

Following the alleged injury on 7/3/20 petitioner was taken to the emergency department at Unity Point Health. She provided a history of left hip pain after a fall that occurred around 10:30 am that morning to Dr. Ade, Dr. Berry, and Courtney Hamilton, APNP. She reported to each that she was working when she tripped over a box landing on her left hip. She denied any loss of consciousness, head injury, numbness, tingling, nausea, or vomiting. Petitioner then underwent a left total hip arthroplasty. This procedure was performed by Dr. Steven Boardman. Her postoperative diagnosis was a closed displaced left femoral neck fracture. Postoperatively, petitioner remained in the hospital for 2 days. On 7/5/20 petitioner was discharged to her home.

Petitioner followed up at ORA on 7/13/20 and 7/27/20. She was seen by Brittnee Rodriguez, FNP-C. On 7/27/20 petitioner reported that she was doing well. Her sutures were removed and physical therapy was ordered. Petitioner also followed up with Dr. Boardman on 8/19/20 and 10/22/20. On 10/22/20 her pain was improved and she had a minimal limp in her gait. Dr. Boardman examined petitioner and his impression was status post left cemented total hip arthroplasty for a femoral neck fracture. He recommended activities as tolerated. X-rays showed a well fixed and aligned total hip arthroplasty. Dr. Boardman told petitioner to follow up in a year.

On 7/15/21 petitioner followed-up with Dr. Boardman for her 1 year checkup. Petitioner reported some soreness. She also reported that she had regained the ability to ambulate better. She noted that increased activity caused her increased pain. X-rays were taken and Dr. Boardman examined petitioner. He noted that petitioner had some soreness in the left hip and bursa. He recommended activities as tolerated, and released her on an as needed basis.

Petitioner testified that by 2021 she had no pain in her left hip.

On 4/21/22 petitioner returned to Dr. Boardman. She reported that she was doing well and then recently developed an onset of significant left hip pain. Petitioner also reported 1-2 years worth of pain and soreness at the base of the neck and collarbone region with bilateral upper extremity radicular symptoms which she noticed after her fall at work on 7/3/20 that had increasingly worsened. Dr. Boardman examined petitioner and took x-rays of her left hip and cervical spine. His impression was status post left uncemented total hip arthroplasty for a femoral neck fracture with cemented cup on 7/3/20, with mild pain, as well as cervical degenerative disc disease with bilateral radicular symptoms. Dr. Boardman recommended continued observation of the left hip. He felt

that it would improve with time. With respect to the neck, he recommended an MRI of the cervical spine with a referral to the pain clinic for a possible epidural steroid injection. He told petitioner to return in 6 months for an x-ray of the left hip.

On 8/17/22 Dr. Boardman drafted a letter to “Whom It May Concern. He wrote that:

“Sandra is a very nice 79 year old lady who sustained a left femoral neck fracture and underwent surgery in July of 2020.

She has done fairly well from a functional standpoint but continues to have significant pain in her left hip and thigh region and will likely continue to experience such pain, which will likely be moderate in severity at times, for the coming years (approximately five years).”

On 11/14/23 petitioner received a letter from The Standard informing her that she was paid a total of \$3,456.00 in Short Term Disability for the period 7/10/20 through 10/1/20. Petitioner’s attorney Nicholas Bigoness also received a letter from Optum confirming that these payments were made. Petitioner confirmed she was paid short term disability. She further testified that she did not receive any temporary total disability.

Petitioner underwent physical therapy for her left hip from 8/3/20 through 10/15/20. On 10/15/20 she reported that her hip/low back seemed to be acting up and she was having a hard time sleeping again. She felt that it was in a similar location and type of pain prior to when she had a spine injection, but not as intense. Her assessment that day was that petitioner was able to tolerate activities with minor reports of pain in the lateral hip/buttock area. It was recommended that petitioner continue physical therapy and plan for discharge to a home exercise program at her next visit. On 11/12/20 petitioner called and said she was dealing with bronchitis issues, but overall was doing better with her hip. She stated that she was continuing to work on her home program and reported that it was going fairly well so far. She indicated that she would contact them as needed. Petitioner was discharged from physical therapy that day.

During her testimony petitioner did have some difficulty recalling the date of the accident, the name of the Manager, how long Stead was the Manager, the hospital she was taken to, and the name of the doctor who performed the surgery. Petitioner also had difficulty recalling whether or not she had an injection into her left hip prior to 7/3/20. She also had some confusion when asked about her surgeries because in addition to her left hip surgery she had bilateral knee surgeries. Petitioner testified that her difficulty remembering some of these things was because the accident was 4 years ago, and her memory “was not as good today as it was at that time.”

Petitioner testified that before the injury she was working and doing everything fine. She stated that her left knee had healed and she only had 2 physical therapy sessions left as of 7/3/20.

Tracy Stead, respondent's Manager on 7/3/20 at the store petitioner was injured at, was called as a witness on behalf of respondent. Stead no longer works for respondent. Stead testified that she last worked for respondent on 6/9/21. She stated that she was testifying pursuant to a subpoena she received from respondent. Stead testified that petitioner was scheduled to work on 7/3/20 and came in a few minutes early to talk to her about her schedule, and the conversation took place in her office. She testified that petitioner was standing in the doorway. She stated that the offices are not very big at all. She stated that there is room for 2 in the office if the door is closed. Stead said she was sitting at her desk when she was talking with petitioner. She testified that when the conversation ended and petitioner turned to leave to clock in, the next thing she knew was that petitioner was laying on the floor. She stated that she "witnessed it kind of out of the corner of her eye." She denied there were any boxes on the ground. Stead testified that to her it looked like petitioner just lost her leg. She stated that it looked like she did not have any stability on that side where she tumbled. Stead noted that she knew petitioner had knee surgeries.

Stead testified that she is responsible for investigating accidents. She was of the opinion that petitioner "got twisted up, like she twisted up herself, or I don't know." She testified that petitioner did not trip over anything at all. Stead testified that there would have been no boxes in her office in July of 2020.

Petitioner's attorney was shown a Form 45 filled out by Angie White, a boss 2 levels above Stead. Neither party offered this Form 45 into evidence. Also, neither party subpoenaed White to testify.

On cross examination Stead testified that petitioner was very close to her on the left when they had their conversation because the offices are very small. She noted that petitioner then turned and just fell to the floor. After that, Stead stated that she jumped right up and hollered for one of the girls out at the registers to come and help her, and they lifted petitioner up and set her in a chair. Stead testified that she completed a report. This report was not offered into evidence by either party. Stead also testified that she completed a statement for respondent in December 2023. This statement was also not offered into evidence by either party.

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

In order for an injury to be compensable, it must arise out of and in the course of the petitioner's employment with respondent. In this case, a dispute exists as to whether or not petitioner's injury arose out of and in the course of her employment with Respondent.

An injury arises out of one's employment if its origin is in a risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. v. Industrial Commission*, 58 Ill.2d 226, 317 N.E.2d 515 (1974); *Warren v. Industrial Commission*, 61 Ill.2d 373, 355 N.E. 2d 488 (1975). "Arising out of" is primarily concerned with causal connection to the employment. The majority of cases look to facts showing an increased risk to which the employee is subjected as compared to the general public. Further, the employee must be performing some task in furtherance of the employer's business or incidental thereto. The mere fact that the worker is at the place of injury because of the employment will not suffice.

The burden is on the party seeking an award to prove by a preponderance of the credible evidence the elements of the claim, particularly the prerequisites that the injury complained of arose out of and in the course of the employment. *Hannibal, Inc. v. Industrial Commission*, 38 Ill.2d 473, 231 N.E.2d 409, 410 (1967); *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.3d 853, 12 Ill.Dec. 146 (1977). The Workers' Compensation Commission, based on the factual situation presented to it, has the obligation and the duty to draw all reasonable inferences from the facts (*City of Chicago v. Industrial Commission*, 60 Ill.2d 283, 326 N.E.2d 769 (1975)), including determining the credibility of the witnesses (*Allen v. Industrial Commission*, 61 Ill.2d 177, 334 N.E.2d 142 (1975)) and making judgment thereon.

When dealing with "arising out of" the employment must be a causative factor. There are three categories of risk to which an employee may be exposed: (a) risks distinctly associated with the employment, (b) personal risks, and (c) neutral risks that have no particular employment or personal characteristics. *Illinois Institute of Technology Research Institute v. Industrial Commission*, 314 Ill.App.3d 149, 731 N.E.2d 795, 247 Ill.Dec. 22 (1st Dist. 2000). The first of these types of risk would be compensable, the second would not, but with respect to the third it is not that clear. With regard to neutral risk, the question of whether an injury arose out of the employment rests on a determination of whether the petitioner was exposed to a risk of injury to a greater extent than that to which the general public was exposed. The increased risk may be either qualitative, that is when some aspect of the employment contributes to the risk; or, quantitative, such as when the employee is exposed to the risk more frequently than the general public. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Commission*, 407 Ill.App.3d 1010 (2011) at 1014.

To determine whether petitioner's accident arose out of her employment, the arbitrator must look to the testimony of the petitioner and Stead, as well as the credible medical records that were offered into evidence. The first determination to be made is with regards to the credibility of both the petitioner and Stead. Petitioner testified that after talking to Stead she turned to leave the office and fell over a box. This accident history is corroborated by the medical records most contemporaneous to the injury. The arbitrator finds it significant that

the accident history provided to Dr. Ade, Dr. Berry, and Courtney Hamilton, APNP, upon her admission to the hospital emergency room immediately following the injury are consistent with petitioner's description of how the accident occurred. Alternatively, Stead testified four years later that when her conversation with petitioner ended and petitioner turned to leave to clock in, the next thing she knew was that the petitioner was laying on the floor. She also testified that she witnessed it "kind of out of the corner of her eye." Stead was of the opinion that petitioner "got twisted up, like she twisted herself up, or I don't know." Stead testified that there were no boxes in her office in July of 2020.

Stead testified that she was responsible for investigating the accident. Although Stead testified that she completed a report, neither party offered it into evidence. Stead also testified that she completed a statement for respondent in December of 2023, and again, this statement was not offered into evidence by either party. Lastly, a Form 45 filled out by Angie White, a boss two levels above Stead, was shown to petitioner's attorney by respondent's attorney and again, this document was not offered into evidence. As a result, the only evidence the arbitrator has to rely on in determining whether the petitioner's accident arose out of her employment is the testimony of the petitioner and Stead, as well as the credible medical records most contemporaneous to the injury.

In Illinois, in evaluating the credibility of a witness, a factfinder may consider that witness' ability and opportunity to observe, memory, manner, interest, bias, qualifications, experience, and any previous inconsistent statement or act by the witness concerning an issue important to the case. Illinois Pattern Jury Instructions-Civil 1.01(A)(5). Factors used in judging witness credibility, including demeanor and manner while on the stand, the witness' interest in the outcome of the case, the manner in which they might be affected by the outcome, and the extent to which the witness is contradicted or corroborated by other credible evidence, as well as any other circumstances that tend to shed light upon credibility, have long been held by the Illinois Supreme Court as proper methods for evaluating witness credibility. *People v. Goodrich*, 251 Ill. 558, 566 (1911).

Here, the petitioner's testimony is corroborated by the credible medical evidence most contemporaneous to the injury, that being the emergency records on 7/3/20. Although the petitioner's recall at trial of the events surrounding her injury posed some difficulty for petitioner, the petitioner testified that it was due to the fact that the accident was 4 years ago, and her memory was not as good presently as it was on the date of accident. However, the arbitrator finds it significant that the medical records of 7/3/20 corroborate the petitioner's testimony that she tripped over a box after talking to Stead in her office about schedule changes for the next two weeks. Alternatively, Stead's testimony and recall of the events does not appear as credible as petitioner's given the fact she specifically stated that petitioner "got twisted up, like she twisted herself, or I don't know." The arbitrator finds this testimony not very persuasive given that Stead stated that it was possible she did not

know how the accident occurred. She also testified that when the conversation with petitioner ended and petitioner turned to leave to clock in, the next thing she knew was that the petitioner was laying on the floor. She further testified that she “witnessed it kind of out of the corner of her eye.” The arbitrator finds this testimony by Stead to not very persuasive as to the mechanism of injury, and absent any additional evidence to corroborate it, less credible than the petitioner’s testimony regarding the accident which is corroborated by the credible medical evidence. Although there appeared to be additional reports and statements regarding petitioner’s fall, neither party chose to admit them into evidence, and for that reason the arbitrator can only rely on the testimony of the petitioner, the testimony of Stead, and the credible medical evidence.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner’s history of how the accident occurred to be more credible than Stead’s, given the corroborating medical evidence. Having found petitioner’s testimony more credible than Stead’s the arbitrator finds petitioner’s fall was due to tripping over a box. Given that petitioner fell over a box in the Manager’s office after discussing her schedule for the next two weeks, in an area where the general public is not permitted access, the arbitrator finds the petitioner was exposed to a greater risk than the general public. The arbitrator also finds the petitioner’s fall was a risk distinctly associated with the employment. Petitioner arrived at work a few minutes early so that she could talk to Stead about changes to the work schedule for the following two weeks due to the 2 remaining physical therapy sessions she had that were related to a knee surgery that was not related to her work activities. The arbitrator finds this conversation petitioner had with Stead prior to her shift beginning was necessary so that petitioner was not scheduled at times she could not work. Had petitioner not spoken to Stead ahead of time and Stead had scheduled petitioner to work during her physical therapy sessions, once Stead became aware of it, she would have had to try and find someone else to cover the shift. With petitioner discussing these changes with Stead prior to the schedule being posted, petitioner removed the need for Stead to scramble to find others that could cover the times petitioner would not be there.

With respect to whether or not the accident occurred “in the course of” the employment, the words “in the course of” refer to the time, place, and circumstances of the accident. In many instances the employee reaches the premises before actually beginning work, the employee will be considered in the course of employment and will be entitled to recover if there exists a causal connection between the condition of the premises and the injury. Pursuant to *Williams v County Mutual Insurance Company*, 28 Ill. App. 3d 274, 328, N.E. 2d 117 (1975) it was found that if an employee has an accident after reaching the employer’s premises but has not yet started work activities, the accident is deemed to be in the course of the employment if there is a causal connection between the accident and the premises.

In the case at bar, the petitioner arrived a few minutes before her shift to discuss her work schedule for the next week with Stead. Since Stead was in her office, petitioner went there to discuss these changes. Petitioner credibly testified that there were boxes in Stead's office, and after their discussion regarding scheduling, petitioner turned to exit the office and fell over one of the boxes. Based on the above, as well as the credible evidence the arbitrator finds although petitioner's injury occurred shortly before she clocked in, the fact that it occurred in her boss's office and involved a discussion regarding the work schedule for the next two weeks, and that there were boxes in Stead's office that petitioner tripped over when departing Stead's office, the arbitrator finds the accident occurred "in the course of" petitioner's employment by respondent. The arbitrator finds the boxes in Stead's office were the cause of petitioner's fall.

Based on the above, as well as the credible record, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that she sustained an accidental injury to her left hip that arose out of and in the course of her employment by respondent on 7/3/20. The arbitrator finds it significant that the only credible evidence offered at trial was the petitioner's testimony, Stead's testimony, and the credible medical evidence. Given that neither party chose to admit any other corroborating evidence, and only petitioner's testimony was corroborated by medical records from the date of accident, the arbitrator finds the petitioner's testimony more persuasive and credible than that of Stead's, which the arbitrator found was less than persuasive given that she testified that she only saw the injury out of the corner of her eye, and then when asked what actually happened, part of her answer was "I don't know." The arbitrator also found it significant that Stead's testimony was not corroborated by any other evidence.

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

Having found the petitioner has proven by a preponderance of the credible evidence that she sustained an accidental injury to her left hip that arose out of and in the course of her employment by respondent on 7/3/20, the arbitrator further finds the petitioner's current condition of ill-being as it relates to her left hip is causally related to the injury. The arbitrator finds that the only medical records offered into evidence support a finding that petitioner sustained a closed displaced left femoral neck fracture as a result of the fall on 7/3/20 when she fell over a box while exiting Stead's office. Respondent offered no evidence to support a finding that the fall on 7/3/20 was not the cause of petitioner's closed displaced left femoral neck fracture, other than Stead's testimony 4 years after the injury, which the arbitrator found to be less credible than petitioner's based on the corroborating medical evidence.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Having found the petitioner has proven by a preponderance of the credible evidence that she sustained an accidental injury to her left hip that arose out of and in the course of her employment by respondent on 7/3/20, and that her current condition of ill-being as it relates to her left hip is causally related to the injury on 7/3/20, the arbitrator finds all medical treatment petitioner received for her left hip from 7/3/20 to 8/17/22 was reasonable and necessary to cure or relieve petitioner from the effects of the injury she sustained on 7/3/20.

Respondent shall pay reasonable and necessary medical services for petitioner's left hip from 7/3/20 through 8/17/22, 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.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner claims she was temporarily totally disabled from 7/3/20 through 10/22/20, a period of 15-4/7 weeks. Respondent claims petitioner is not entitled to any temporary total disability benefits.

Following the accident on 7/3/20 petitioner was off authorized off work through 10/22/20. On that date petitioner had already completed her physical therapy and Dr. Boardman instructed petitioner to follow-up in a year. He recommended activities as tolerated. Petitioner did not return to work for respondent.

On 11/14/23 petitioner received a letter from The Standard informing her that she was paid a total of \$3,456.00 in Short Term Disability for the period 7/10/20 through 10/1/20. Petitioner's attorney Nicholas Bigoness also received a letter from Optum confirming that these payments were made. Petitioner confirmed she was paid short term disability. Respondent made no claim for these payments on the Request for Hearing.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner is entitled to temporary total disability benefits from 7/4/20 through 10/22/20, a period of 15-6/7 weeks. The arbitrator further finds the respondent is not entitled to a credit for the \$3,456.00 received in short term disability benefits petitioner received for the period 7/10/20 through 10/1/20, because respondent presented no evidence that it had paid or contributed to any of the premiums for Standard's coverage. Additionally, respondent did not claim on the Request for Hearing that it paid \$3,456.00 in non-occupational indemnity disability benefits.

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 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 Dr. Boardman in his office note of 7/15/21 stated that "today utilizing the Guide to Impairment rating, figure 17-10 and table 17-9, Sandra has a left lower extremity impairment less 25% whole body 10% related to her left hip fracture and subsequent total hip arthroplasty." It is unknown what edition of the Guide to Impairment Rating Dr. Boardman used. For this reason, the Arbitrator gives lesser weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes petitioner was a kitchen team member worker for respondent. After her injury, and release from care, petitioner did not return to work for respondent. For this reason, the Arbitrator gives lesser weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes Petitioner was 77 years old on the date of injury. For this reason, the Arbitrator gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, there is no credible evidence to support a finding that petitioner attempted to return to work for respondent. Additionally, there was no evidence offered regarding petitioner's future earning capacity. 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, petitioner underwent a left total hip arthroplasty on 7/3/20 performed by Dr. Boardman. Her post-operative diagnosis was a closed displaced left femoral neck fracture. Post-operatively, petitioner had follow-up visits with Dr. Boardman and underwent approximately three months of physical therapy. When petitioner saw Dr. Boardman on 10/22/20 her pain was improved and she had a minimal limp in her gait. On 7/15/21 she reported some soreness, but also noted that she had regained the ability to ambulate better. She reported that increased activity caused increased pain. She noted some soreness in her left hip. Petitioner testified that by 2021 she had no pain in her left hip. However, when petitioner last saw Dr. Boardman on 4/21/22 she reported that she was doing well, and then recently developed an onset of significant left hip pain. Dr. Boardman

recommended continued observation of the left hip. He thought it would improve with time. In a note dated 8/17/22 Dr. Boardman noted that petitioner continued to have significant pain in her left hip and thigh region and would likely continue to experience such pain, which would likely be moderate in severity at time for approximately 5 years. At trial, petitioner did not testify to the current status of her left hip complaints.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 35% loss of use of her left leg, pursuant to Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC019869
Case Name	Kelly Cox v. Carroll Farms LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0374
Number of Pages of Decision	22
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Noah Hamann

DATE FILED: 9/11/2025

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF)
 CHAMPAIGN

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KELLY COX,

Petitioner,

vs.

NO: 22 WC 19869

CARROLL FARMS, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by both the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the June 7, 2022 accidental injury, entitlement to medical expenses as well as prospective medical care, entitlement to temporary disability benefits, and the discussion of facts not in the record, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

FINDINGS OF FACT

The Commission adopts the Findings of Fact as set forth in the Decision of the Arbitrator and incorporates such facts herein.

CONCLUSIONS OF LAW

I. Prospective Medical Care

Upon establishing causal connection and the reasonableness and necessity of

recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Industrial Commission*, 294 Ill. App. 3d 705, 711-12 (2d Dist. 1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Industrial Commission*, 325 Ill. App. 3d 527, 534 (1st Dist. 2001).

The Arbitrator found Petitioner to be credible, and noted he appeared to be in pain during the hearing and moved in a slow, protective manner. However, contrary to the recommendation of treating physician Dr. Gornet, the Arbitrator declined to award the prospective four-level cervical spine disc arthroplasty from C3-4 to C6-7. The Arbitrator noted that Petitioner's smoking habit continues, and Respondent's §12 examiner Dr. VanFleet provided un rebutted testimony that smoking impaired the microvasculature in Petitioner's body, and accelerated his degenerative spine condition. Petitioner indicated a desire to return to full duty in his heavy labor position. However, the Arbitrator found that Petitioner has responsibilities to assist in, and maximize the probability of success of his own recovery, and that his failure to make a medically necessary lifestyle change that is within his control (cessation of his smoking habit) was problematic.

Additionally, the Arbitrator was not persuaded that a four-level disc arthroplasty was indicated. In addition to treating physician Dr. Basho declining to recommend surgery, the Arbitrator found that there was minimal conservative care provided, and also found that Dr. Gornet failed to adequately explain his decision to change his surgical recommendation from a three-level arthroplasty on January 9, 2023, to a four-level arthroplasty on July 6, 2023. While the Arbitrator agreed that additional medical care was necessary to cure and/or relieve the effects of the injury to Petitioner's cervical spine, he did not agree that the recommended arthroplasty was the appropriate vehicle to do so.

As it pertains to Petitioner's inability to quit smoking, we find the Arbitrator's reasoning to be tantamount to a version of a §19(d) argument. §19(d) of the Act reads:

If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical, surgical, or hospital treatment as is reasonably essential to promote his recovery, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee. 820 ILCS 305/19(d).

The Commission disagrees with the Arbitrator that Petitioner engaged in an injurious practice which terminated his entitlement to benefits (in this case the prospective cervical spine surgery). While the surgery is recommended as part of Petitioner's recovery, there is no evidence in the record that Petitioner deliberately attempted to impede his recovery or *refused* to submit to smoking cessation in order to further his recovery. The cases in which §19(d) of the Act have been invoked distinguish the intent of the conduct to determine if it is obstructing recovery. See, e.g., *Global Prods. v. Illinois Workers' Compensation Commission*, 392 Ill. App. 3d 408, 12-13 (2009) (finding no evidence that the claimant smoked cigarettes for the purpose of retarding his recovery and, specifically, that he smoked "in spite of its potential impact on his recovery, not because of it."). The acts involved must rise above mere negligence.

Larson's Workers' Compensation Treatise provides additional insight, stating: "The degree of claimant misconduct required to break the chain of causation should therefore be not mere negligence, but intentional conduct that is clearly unreasonable. *Larson's Workers' Compensation-*

Desk Edition, Section 10.10[1] (2022). “Similarly, continued cigarette smoking has been held not to be an ‘injurious practice’ that would allow reduction or elimination of benefits.” *Larson’s Workers’ Compensation-Desk Edition, Section 10.10[4]* (2022). In the case at bar, Respondent’s own Dr. VanFleet testified that Petitioner was trying to cut down on his smoking. Thus, it is reasonable to conclude that Petitioner should not be penalized simply because he failed to prevail over his addiction. The evidence does not establish that Petitioner willfully refused to curb his smoking habit, and in fact indicates that he was actively trying to quit. The Commission finds that this issue does not rise to the level where prospective treatment should be denied.

Next, the Commission finds that treating physician Dr. Basho’s opinion that surgery was not recommended is unpersuasive. Dr. Basho opined Petitioner’s upper extremity numbness was likely an acute exacerbation of his chronic foraminal stenosis, that Petitioner did not require any spinal surgery, and that his primary care physician should determine his long-term restrictions. Dr. Basho also opined that it may take several weeks or months for Petitioner’s back pain to resolve. The Commission finds that the evidence directly contradicts Dr. Basho’s opinion. Petitioner did not suffer a mere temporary exacerbation of a chronic condition, but an aggravation that has failed to return to baseline well past the time frame estimated by Dr. Basho in November of 2022. The Commission notes that 15 months after Dr. Basho’s opinion, Petitioner’s symptoms continued to persist through the date of trial.

With regard to the change in Dr. Gornet’s surgical recommendation from a three-level arthroplasty to a four-level arthroplasty, we find that the record provides a clear frame of reference for this change. From the outset of Dr. Gornet’s treatment, it was noted that Petitioner had suffered acute herniations at four levels: C3-4, C4-5, C5-6, and C6-7. However, since the majority of symptoms were housed from C4-5, C5-6, and C6-7, the surgical recommendation was limited to those levels. Nevertheless, Dr. Gornet was clear in his opinion that a delay in treatment may affect Petitioner’s overall outcome. In the interim, Petitioner sought approval from Respondent for the recommended surgery, but was unsuccessful.

Eventually, Dr. Gornet’s hypothesis rang true when, several months later, after Petitioner continued working, his pain had worsened, and a new cervical MRI revealed progression of his disc injuries at all levels. It was at this time that Dr. Gornet modified his surgical recommendation to a four-level arthroplasty, now including the C3-4 level. Dr. Gornet also opined that if Petitioner continued working or began to use narcotics, either would be detrimental. Taken in totality, we deduce that the delay in treatment combined with Petitioner’s continued working caused a deterioration at the C3-4 level, so much so that it eventually required surgical repair. The Commission finds this to be adequate reason for the change in Dr. Gornet’s surgical recommendation.

Regarding prospective lumbar spine medical care, the Arbitrator did agree with Dr. Gornet’s recommendations for physical therapy, steroid injections, and radiofrequency ablations, and awarded such. While the Commission affirms this award, we also specify that, per Dr. Gornet, these undertakings should only occur after successful cervical spine surgery.

Lastly, the Commission takes note of the bottom of page 14 and the top of page 15 of the Decision of the Arbitrator. Therein, a summation of a discussion between the parties and the Arbitrator which occurred after the close of proofs was memorialized. It indicated that the Arbitrator requested that the parties agree on a spine surgeon to send Petitioner to for another evaluation. However, the parties were unable to reach such an agreement. The Commission finds

that any mention or reference to this off-the-record discussion within the Decision of the Arbitrator was in error, and should be stricken.

All else is affirmed.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$650.79 per week for a period of 5 & 1/7ths weeks, representing January 10, 2024 through February 14, 2024, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall have a credit of \$17,245.93 for benefits already paid. All temporary total incapacity benefits have been paid except the above-mentioned 5 & 1/7ths weeks.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses set forth in Petitioner's Exhibit 1, as provided in §8(a), subject to §8.2 of the Act. Payment shall be made directly to Petitioner's attorney, pursuant to §9080.20 of the Rules Governing Practice before the Illinois Workers' Compensation Commission.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the four-level cervical disc replacement surgery from C3-4 to C6-7 recommended by Dr. Gornet, as provided in §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent provide and pay for the prospective lumbar spine treatment recommended by Dr. Gornet, as provided in §8(a) of the Act. This treatment is to be undertaken after successful cervical spine surgery.

IT IS FURTHER ORDERED BY THE COMMISSION that any reference to the off-the-record discussion between the parties and the Arbitrator regarding an additional surgical evaluation shall be stricken from the Decision.

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

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

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

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

September 11, 2025

RAW/wde

/s/ *Raychel A. Wesley*

O: 7/23/25

/s/ *Frank J. Soto*

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/s/ *Carolyn M. Doherty*

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC019869
Case Name	Kelly Cox v. Carroll Farms LLC
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	Adam Hinrichs, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Noah Hamann

DATE FILED: 4/22/2024

/s/ Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 16, 2024 5.155%

STATE OF ILLINOIS)
)SS.
 COUNTY OF Champaign)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Kelly Cox
 Employee/Petitioner

Case # **22** WC **019869**

v.

Consolidated cases: _____

Carroll Farms, 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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Champaign, Illinois**, on **February 14, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **June 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 **\$50,761.88**; the average weekly wage was **\$976.19**.

On the date of accident, Petitioner was **62** 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 **\$17,245.93** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$26,013.03** for other benefits, for a total credit of **\$43,258.96**.

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

ORDER

Respondent shall pay Petitioner additional temporary total disability benefits of \$650.79/week for 5 1/7 weeks, commencing January 10, 2024 through February 14, 2024, as provided in Section 8(b) of the Act.

Respondent shall pay all reasonable and necessary medical services as set forth in Petitioner's Exhibit 1, pursuant to the medical fee schedule, as provided in 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 reasonable, necessary and related medical care to cure and relieve the effects of Petitioner's work injury to his cervical and lumbar spine.

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

April 22, 2024

FINDINGS OF FACT

Petitioner is employed by Respondent, Carroll Farms, as a welder, mechanic and plumber. (T. 13) His work duties are heavy in nature. (T. 14) On June 7, 2022, he was asked by Respondent to cut a manhole out of a cone-shaped feed bin. (T. 14, 15) The feed bin had a stationary ladder attached to it, but he could not reach the area where Respondent wanted the hole cut with the stationary ladder, so he used a tall ladder to reach the area. (T. 14, 15) He had gone up and down the ladder several times with no issues, but when he carried up the lid to attach it to the bin, he had to step up another ladder rung to reach the area, and when he did so, the ladder slipped out from under him causing him to fall. (T. 13, 14) He estimates that he fell 17 or 18 feet onto a solid steel extruder barrel. (T. 15, 16) The extruder barrel had thermocouples that extended out nine inches, and when he hit the barrel, the impact caused one of them to break off. (T. 15, 16) He struck the barrel with the left side of his body and used his left hand to shield his face and protect his head. (T. 15, 16) Immediately after the accident, Petitioner was in “terrible pain” and he could not breathe. (T. 16, 17) His coworker drove him to the hospital. (T. 16, 17)

Petitioner presented to the emergency department at Memorial Hospital in Carthage, Illinois in acute distress with pain in the left side of his chest, left arm, left shoulder, abdominal and left leg, with a history of falling approximately 15 to 20 feet from a ladder. (PX3, 6/7/22, p. 2) On exam, he had pain from the clavicle down to the pelvis. *Id.* It was noted that he was holding his head up as the ladder slid down. *Id.* at 8. A review of symptoms indicated that Petitioner was positive for myalgias and neck pain. *Id.* at 10.

A CT scan of the cervical spine showed no fracture or misalignment. *Id.* at 14, 54. Petitioner was given Toradol and Dilaudid in the emergency department. *Id.* at 15. The impression was contusion of the left chest wall, sprain of the left shoulder and abrasion of the left lower extremity. *Id.* at 14. Petitioner was given a prescription for Norco and discharged with instructions to follow up with his primary care physician. *Id.*

Petitioner testified that he had never been in the kind of pain he was in following his accident. (T. 17) Immediately after the accident, he had pain in his left arm and left leg. (T. 16, 17) He testified that three to four days after he fell, he started to have intermittent numbness in his neck below his left ear that came down across his left shoulder and into his left arm and hand. (T. 17, 18)

On June 10, 2022, Petitioner was seen by Jeffrey Leon, PA-C at Memorial Medical Clinic in follow up from his emergency room visit. (PX3, 6/10/22) PA Leon noted that Petitioner fell approximately 17 feet and landed on a cylinder on the left side of his chest. *Id.* at 16. He continued to have significant pain on the left side of his chest and pain while breathing. *Id.* PA Leon noted that Petitioner had generalized muscular pain, left-sided neck pain and significant pain with light movements. *Id.* at 16-17. Review of symptoms was positive for chest tightness, chest pain, flank pain, arthralgias, back pain and neck pain. *Id.* at 17. Exam showed chest wall tenderness and muscular tenderness to the cervical back area but with “full passive range of motion without pain and neck supple” without rigidity or crepitus and no pain with movement or spinous process tenderness. *Id.* Petitioner was kept off work for two weeks, given a prescription for Norco and was instructed to use warm, moist heat to the chest area. *Id.* at 18.

On June 11, 2022, Petitioner presented to the emergency department at Memorial Hospital and indicated that he had abdominal and left-sided chest pain which was worsening. (PX3, 6/11/22) A CT was performed, which showed no evidence of rib fractures and no changes from the CT on the date of the injury. *Id.* Petitioner was prescribed an albuterol inhaler, was encouraged to use incentive spirometry, and was instructed to continue taking his pain medications. *Id.*

On June 20, 2022, Petitioner followed up with PA Leon, who noted that he was still in a lot of pain from his left sided rib contusions, that he had pain with any type of movement, and that he had a cough which caused excruciating pain. (PX3, 6/20/22, p. 24-26) Petitioner was kept off work. *Id.*

On July 5, 2022, Petitioner returned to PA Leon, who indicated that Petitioner had cough, chest tightness, chest pain, left leg and back pain. (PX3, 7/5/22, p. 27-29) Petitioner was given prescriptions for Norco and Flexeril, was kept off work, and instructed to return in two weeks. *Id.*

Petitioner returned to PA Leon on July 21, 2022 and reported left upper rib pain into the left pectoralis area, stiffness with any kind of movement, left shoulder pain and neck pain with numbness and tingling down his left arm and fingers. (PX3, 7/21/22, p. 29-30) He had limited range of motion with his left shoulder along with pain and he had been unable to carry anything with his left arm. *Id.* Exam of Petitioner's neck showed tenderness to the trapezius area and paraspinal area on the left. *Id.* His left shoulder had limited range of motion with internal and external rotation. *Id.* He had positive lift off and drop arm signs, equivocal Neer and Hawkins signs and negative Speed's testing. *Id.* An MRI of Petitioner's left shoulder was ordered. *Id.* The left shoulder MRI was performed at Memorial Hospital on August 1, 2022, and showed AC arthropathy and tendinopathy of the supraspinatus tendon and biceps. (PX3, 8/1/22, p. 66)

Petitioner returned to PA Leon on August 4, 2022 with symptoms of left-hand numbness, left arm weakness and shoulder, chest, back and neck pain. (PX3, 8/4/22, p. 32-34) PA Leon indicated that Petitioner had significant pain in his left shoulder and to the left side of his neck with radicular pain down the triceps distribution area and into his hand with numbness involving his fingers. *Id.* He had significantly decreased range of motion in the left shoulder, and he could not raise same past 90 degrees. He had significant low back pain along the left side toward the midline as well as to the right. *Id.* PA Leon noted Petitioner still had left-sided rib pain and stated that "this is all from a fall on 6/7/2022 at work." *Id.*

PA Leon stated that Petitioner's left shoulder MRI showed arthropathy and tendinopathy; however, there were no tears noted. *Id.* On exam of his neck, Petitioner had tenderness to his trapezius and paraspinal area on the left as well as spinous process tenderness and pain with movement. *Id.* He had limited range of motion in his shoulder with positive lift off and drop arm signs and a positive Spurling maneuver, equivocal Neer and Hawkins signs but negative Speeds testing. *Id.* The assessment was lumbar and cervical radiculopathy, and hypertension. *Id.* PA Leon ordered MRIs of Petitioner's lumbar and cervical spine and continued him off work. *Id.*

An MRI of Petitioner's cervical spine on August 15, 2022 showed facet arthropathy with moderate left neural foraminal stenosis at C3-4, facet arthropathy with moderate right neural foraminal stenosis at C4-5, facet and uncovertebral arthropathy with mild bilateral neural stenosis at C5-6, and facet and uncovertebral arthropathy with bilateral moderate neural foraminal stenosis at C6-7. (PX3, 8/15/22, p. 67) Petitioner underwent an MRI of his lumbar spine that same day which showed facet arthropathy and disc bulging with minimal left and moderate right neural foraminal stenosis at L3-4, facet arthroscopy and disc bulging with moderate bilateral neural foraminal stenosis at L4-5 and facet arthropathy with mild left and mild-to-moderate right neural foraminal stenosis at L5-S1. *Id.* at 69.

On August 18, 2022, Petitioner returned to PA Leon, who indicated that Petitioner's fall at work had injured his head, neck, ribs, chest and lower back. (PX3, 8/18/22, p. 34-36) PA Leon stated that Petitioner had significant trouble with rib pain for a long time and that he "did develop severe neck pain and lumbar pain after the rib pain started to subside." *Id.* He noted that Petitioner had weakness and numbness down his left arm in the trapezius distribution and going down the third and fourth fingers on the left hand. *Id.* He had radicular pain down his left leg, mainly in the posterior deltoid or lateral aspect of the lower leg, and in the lateral aspect of the left foot. *Id.*

He noted that Petitioner had radicular pain and numbness distally. *Id.* He reviewed Petitioner's MRIs and referred him to orthopedic surgery. *Id.* He indicated Petitioner was still off work. *Id.*

On September 19, 2022, Petitioner returned to PA Leon with continued symptoms of left shoulder and arm pain, headaches, neck pain, numbness of the left arm and left leg and weakness in the left hand. (PX3, 9/19/22, p. 36-38) He indicated that Petitioner's neck pain caused him difficulty getting comfortable at night to sleep, that he had loss of grip in his left arm at times and that he tries not to pick anything up. *Id.* He noted that Petitioner had not had any falls other than his significant fall at work. *Id.* On exam, Petitioner still had significant tenderness at the base of the cervical spine and to the left trapezius area. *Id.* There was tenderness over the left joint area and painful shoulder rotation; however, it was noted that the MRI of the shoulder was negative for significant pathology. *Id.* Petitioner's neurological exam showed a slightly weakened grip on the left in comparison to the right and decreased leg extension and flexion on the left. *Id.* He was instructed to follow up in one month after he saw Dr. Basho for a surgical opinion. *Id.*

On September 23, 2022, Petitioner presented to Dr. Rahul Basho with a chief complaint of neck pain. (PX4, 9/23/22, p. 2-6) Dr. Basho took the consistent history of Petitioner's fall from a ladder and indicated Petitioner reported neck, left trapezius and left arm pain and pain going down into his fingers. *Id.* His symptoms were worsened when raising his arm. *Id.* He had undergone conservative treatment of pain medication and topical medications. *Id.* He also reported left shoulder pain as well as low back and bilateral buttock pain with occasional tingling in his left toes and foot. *Id.* Petitioner reported that his symptoms began with his work accident. *Id.*

Exam showed mildly antalgic gait, positive Hoffman's sign bilaterally, positive bilateral straight leg testing, painful AC chest testing, positive empty can test and external rotation, weakness and reduced strength. *Id.* His bilateral quadriceps strength testing was painful. *Id.* The left upper extremity showed decreased sensation to light touch. *Id.* Dr. Basho reviewed Petitioner's left shoulder cervical and lumbar MRIs and his impressions were cervical radiculopathy, rotator cuff tendinitis and acute low back pain with associated lumbar radiculopathy. *Id.* For his cervical radiculopathy, Petitioner was instructed to use Tylenol for pain and was referred to pain management for a therapeutic and diagnostic C6-C7 epidural steroid injection. *Id.* Regarding Petitioner's left shoulder, he was referred to Dr. Richard Baumann. *Id.* For his low back pain, Petitioner was referred to physical and/or occupational therapy. *Id.*

Petitioner testified that at his initial appointment, Dr. Basho indicated that he needed surgery, but at his follow up visit, Dr. Basho did not recommend surgery, instead recommending pain management (T. 21)

On October 3, 2022, a phone note shows the Petitioner called PA-C Leon's office. (PX3, pg. 40). The Petitioner reported that Dr. Basho gave the Petitioner a letter returning him to full duty work the following day. The Petitioner described Dr. Basho as a "quack" who was being paid off by his employer to return the Petitioner back to work. Petitioner said Dr. Basho reported to him that his pain was coming from his shoulder and not his neck, and was given a shoulder injection. Petitioner stated that he would not return to work the next day and he wanted a note from PA-C Leon keeping him off work.

Also on October 3, 2022, Petitioner saw Dr. Richard Baumann, who noted the history of Petitioner's fall injury, as well as his symptoms of left shoulder and neck pain, loss of motion, numbness and tingling, and pain radiating into the hand. (PX4, 10/3/22p. 7-10) On exam, Petitioner had reduced strength at the left supraspinatus, limited range of motion with pain, soreness to the musculature medial to the acromion and the area of the spine and scapula. *Id.* Dr. Baumann indicated that his midline pain seemed to start from the trapezius and then work its way out. *Id.* His assessments were shoulder pain, shoulder impingement and left partial rotator cuff tear. *Id.* He recommended physical therapy ("PT"), and a left shoulder injection was performed that day in the office. *Id.* Dr. Baumann indicated Petitioner could work with no left arm duty. *Id.*

Petitioner performed PT at Advanced Physical Therapy and Sports Medicine from October 12, 2022, through November 3, 2022, for 8 visits, with “mild complaints of pain and difficulty” in completing his PT activities, yet showed “little to no improvement” in his symptoms. (PX5)

On October 10, 2022, Petitioner saw Dr. Luvell Glanton, who documented Petitioner’s history of injury, subsequent cervical and radicular symptoms, and performed an epidural steroid injection at C6-7. (PX6)

On October 31, 2022, Petitioner returned to Dr. Baumann and reported that he had not gained improvement following the shoulder injection and that PT had not been beneficial either. (PX4, 10/31/22) Dr. Baumann’s impression was that Petitioner did not have a limiting shoulder dysfunction. *Id.* He indicated Petitioner’s problem persisted toward the midline neck radiating toward the trapezius with intermittent neurologic discomfort that radiated into the left greater than right arm. *Id.* He found Petitioner was at maximum medical improvement with regard to his shoulder. *Id.*

On November 4, 2022, Petitioner returned to Dr. Basho for his cervical radiculopathy and reported that the epidural injection had been ineffective, but that the numbness in his left arm was now intermittent. (PX4, 11/4/22, p. 13-14) Petitioner reported to Dr. Basho that all of his symptoms began after his work accident. *Id.* Dr. Basho indicated that Petitioner was walking with an antalgic gait, but his exam was otherwise unchanged. *Id.* Dr. Basho noted that Petitioner’s left upper extremity numbness was likely an acute exacerbation of his chronic foraminal stenosis. *Id.* Dr. Basho indicated that no surgical intervention or formal restrictions were needed from a spine standpoint. *Id.* He stated that any restrictions Petitioner may require should be implemented secondary to his pain. *Id.* He was referred back to his primary care provider to determine his restrictions and to transition him back to work as him as his pain improved. *Id.* Dr. Basho stated that if Petitioner’s pain continued after the conservative measures, his recommendation would be for a functional capacity evaluation. *Id.* With regard to Petitioner’s low back, he recommended keeping his back and stomach muscles strong, using good posture, learning the safest way to lift heavy objects, and managing stress. *Id.* He stated that it may take several weeks or months for his back pain to resolve. *Id.*

On November 4, 2022, Petitioner called PA-C Leon’s office. (PX3, p. 40). A phone note indicated the Petitioner was told by Dr. Basho that no surgery would be performed. Petitioner advised he thought he was going to have surgery, he asked what to do, and proposed the idea of a second opinion as conservative measures were not helping. Petitioner was scheduled for an appointment with PA-C Leon.

On November 14, 2022, Petitioner returned to PA Leon for a follow up of his neck, shoulder and back pain. (PX3, 11/14/22, p. 41-43) PA Leon noted that Petitioner had seen Dr. Basho and Dr. Baumann, that his cervical injection had not provided relief, and that it was felt that his neck and shoulder pain were cervical in nature and not due to a rotator cuff tear. *Id.* Petitioner reported that Dr. Basho thought that he might not benefit from a surgical procedure. *Id.* Petitioner still had neck pain, weakness of the left arm and left leg, numbness in the left foot and down the left arm and loss of grip in the left arm. *Id.* He reported having a difficult time getting comfortable at night to sleep and he was still unable to do the work that he was doing prior to his fall. *Id.*

PA Leon noted that on exam, that Petitioner’s cervical spine showed pain with movement, muscular tenderness and decreased range of motion. *Id.* He had significant tenderness at the base of the cervical spine and toward the left trapezius area, tenderness over the left AC joint area, pain with internal and external rotation, a weakened grip on the left in comparison with the right and weakened leg flexion and extension on the left. *Id.* Petitioner wanted another opinion on his spine and PA Leon ordered a referral to neurosurgery. *Id.*

On November 15, 2022, there is a phone note from the Petitioner to PA-C Leon’s office indicating that his lawyer would be sending information to refer Petitioner to a specialist in St. Louis. (PX3, p. 43). On the

following day there is another phone note indicating the physician that the lawyer recommended for the Petitioner was a “Dr. Lehman” in St. Louis. (*Id.*).

On November 16, 2022, Petitioner called PA Leon’s office and stated that he had no other choice but to return to work and that he needed a work release listing any stipulations he may need. (PX3, p. 44)

On December 13, 2022, Petitioner returned to PA Leon with continued symptoms of neck, back and shoulder pain, left arm and left leg numbness, and weakness in the left hand. (PX3, 12/13/22, p. 44-46) Petitioner reported that he had been back to work performing his regular duties and was tearing down a shed; however, he felt this was too much for him to be doing, as he could not reach overhead with his arms and he experienced dizziness and vertigo when tilting his head back. *Id.* Exam showed significant tenderness at the cervical musculature, and especially at the trapezius on the left side that extended to the occipital portion of his head. *Id.* He had tenderness over the AC joint and pain with internal and external rotation and with flexion. *Id.* He had weakened leg flexion and extension on the right. *Id.* Petitioner was referred to an orthopedic spine surgeon in St. Louis. *Id.*

On January 9, 2023, Petitioner presented to the office of Dr. Matthew Gornet with symptoms of neck, trapezius, left shoulder and left arm pain with numbness and tingling in his hand. (PX7, 1/9/23, p. 2-5) He also had low back pain to both sides into the bilateral buttocks and hips. *Id.* Dr. Gornet took the history of Petitioner’s fall injury, stating that he was on a ladder 15 to 20 feet off the ground, when the ladder slipped and he fell, hitting a pipe on the way down. *Id.* Dr. Gornet reviewed Petitioner’s prior treatment notes from Memorial Hospital, Dr. Basho, Dr. Baumann, and Dr. Glanton. *Id.* Dr. Gornet indicated that Dr. Basho suggested that Petitioner follow up with pain management and that Petitioner had returned to work with restrictions, but he continued to have pain that had not improved since his accident. *Id.* Dr. Gornet noted that Petitioner had previously had some chiropractic care greater than 10 years prior; however, he did not have any previous problems of significance with regards to his neck, back or shoulders. *Id.* Dr. Gornet noted that Petitioner was a pack a day smoker. *Id.*

Petitioner’s symptoms were constant and worsened with sitting prolonged sitting, standing, bending and lifting. *Id.* Exam showed pain to the base of Petitioner’s neck into both trapezius, decreased rotation to the left, decreased extension, mild decrease in left biceps and left wrist dorsiflexion, decreased sensation in the distribution of the left hand, and low back pain to both sides, buttocks and hips. *Id.* Dr. Gornet indicated that Petitioner had tried and failed conservative measures. *Id.* He reviewed Petitioner’s prior cervical and lumbar MRIs and referred him to MRI Partners of Chesterfield for a high-resolution cervical MRI with foraminal views as well as a CT scan, both of which were performed that day. *Id.*

Petitioner returned to Dr. Gornet that same day following his cervical CT and MRI. *Id.* Dr. Gornet indicated that the CT scan showed mild to moderate facet changes on the left at C3-4, which caused some bony encroachment into the neural foramen resulting in anterior compression and fairly severe stenosis at that level, but there was no severe facet arthropathy. (PX7, 1/9/23; PX9, 1/9/23) The MRI scan showed central disc protrusion at C3-4, C4-5, C5-6 and C6-7. (PX7, 1/9/23; PX8, 1/9/23) There were central left acute-on-chronic herniations at C4-5, C5-6, and particularly at C6-7. *Id.* Dr. Gornet indicated that left density views revealed significant foraminal narrowing secondary to osteophyte, and an acute fragment. *Id.*

Regarding Petitioner’s lumbar spine, Dr. Gornet believed he aggravated his underlying degeneration and stenosis at L3-4 and L4-5, had an aggravation of his facet arthropathy at L4-5 and had a disc injury at those levels as well as at L5-S1. *Id.* He recommended placing Petitioner’s lower back care on hold pending treatment of his cervical spine. *Id.*

Dr. Gornet believed that Petitioner’s June 7, 2022 work injury aggravated his underlying degenerative condition at C6-7 and C3-4 and caused acute herniations at C3-4, C4-5, C5-6 and C6-7. (PX7, 1/9/23) He believed the

majority of Petitioner's left-sided symptoms were coming from C4-5, C5-6, and C6- C7 and he recommended disc replacements at those three levels. *Id.* He indicated Petitioner had at least 50% probability of requiring a posterior foraminotomy at C3-4 as well. *Id.* He noted that Petitioner could continue to work light duty while they sought approval for treatment. *Id.*

On April 3, 2023, Petitioner returned to Dr. Gornet's office where he saw Nathan Collins, PA for a follow up of his neck and low back pain. (PX7, 4/3/23, p. 6) PA Collins noted that Petitioner was on light duty and was working within his restrictions. *Id.* Petitioner reported that his pain and symptoms continued to affect his quality of life and all aspects of his life. *Id.* He continued to have neck pain and left upper extremity symptoms as well as low back pain into his hips and buttocks. *Id.* PA Collins indicated that their office continued to seek approval for a three-level disc replacement. Petitioner was working light duty; however, he was becoming fairly miserable and PA Collins stated that he may ultimately need to be placed off work. *Id.* He indicated that a delay in Petitioner's treatment might affect his overall outcome. *Id.* He was instructed to return in several months or sooner should his treatment be approved. *Id.*

On April 10, 2023, Petitioner returned to PA Leon for an annual exam. (PX3, 4/10/23) He requested a stress test for preoperative clearance prior to his spine surgery, which was ordered. *Id.* His exam was positive for neck and back pain, neck stiffness and numbness in his toes. *Id.*

Petitioner returned to Dr. Gornet on July 6, 2023 and indicated that his pain seemed to be worsening. (PX7, 7/6/23, p. 7-8) Due to his progressive symptoms, a new MRI scan was performed which showed herniation into the foramen on the right at C3-4, C4-5, and C5-6, as well as mild foraminal encroachment on the right. (PX7, 7/6/23; PX8, 7/6/23) On the left, Petitioner had acute-on-chronic herniations at C5-6 and C6-7 with significant foraminal herniation, which appeared to be acute at C6-7 and which was fairly large. *Id.* Dr. Gornet indicated there were disc injuries C3-4, C4-5 and C5-6. (PX7, 7/6/23) He believed Petitioner continued to have foraminal narrowing at C3-4 and would need a posterior foraminotomy. *Id.* He stated that Petitioner had some degeneration at C6-7 with loss of disc, but also had a clear acute fragment into the foramen, which he believed was new and related to his injury. *Id.* He stated that otherwise, the majority of his spine was not degenerative. *Id.* Dr. Gornet indicated the new plan was a four-level, rather than the previously recommended three-level, disc replacement with a potential posterior foraminotomy at C3-4. *Id.*

Dr. Gornet reviewed a Section 12 examination report from Dr. Timothy VanFleet, *infra*, and strongly disagreed with Dr. VanFleet's opinion that Petitioner had bilateral facet changes at C5-6 and C-7. *Id.* Dr. Gornet indicated that Dr. VanFleet described Petitioner's significant axial neck and back pain, but did not mention his continued reports of left shoulder and left arm pain, which were documented in his previous work ups. *Id.* In contrast with Dr. VanFleet, Dr. Gornet explained that Petitioner was not at maximum medical improvement, as there were defined obvious objective disc injuries present, and that these injuries could be treated successfully with surgery. *Id.* Dr. Gornet stated that he did not feel Petitioner's problem was related to pre-existing degeneration, as he had been working for Respondent for six-and-a-half years, and there was no indication that he ever required treatment for his neck or back prior to his fall injury. *Id.* He indicated that if Dr. VanFleet's interpretation was correct, then Petitioner would have sought medical treatment prior to his injury; however, there was no pre-existing treatment, and therefore the diagnosis of degeneration in and of itself was not plausible. *Id.* Dr. Gornet believed it was more plausible, especially based on the MRI scans, that Petitioner had disc injuries in the face of his mild pre-existing degeneration at C6-7 and facet changes at C3-4 on the left and C4-5 on the right. *Id.* He stated that Petitioner had a clear fall, clear objective pathology and that the new MRI showed progressive pathology, which was consistent with his complaints of progressive symptoms. *Id.* He indicated that although Petitioner was working, he needed treatment. *Id.* He was not sure how long Petitioner could continue work or begin seeking narcotics, both of which would be detrimental to him. *Id.* Dr. Gornet indicated Petitioner was an excellent candidate for cervical disc replacement and he believed he could help Petitioner. *Id.*

Petitioner underwent preoperative testing at Memorial Hospital on July 18, 2023 and August 9, 2023. (PX3, 7/18/23, 8/9/23) He returned to PA Leon on August 25, 2023 for a follow up on his stress test and a preop physical. (PX3, 8/25/23) He noted that Petitioner continued to have significant neck pain and numbness down his toes. *Id.* His exam was unchanged and he was cleared for spine surgery. *Id.*

Petitioner returned to PA Leon on September 15, 2023 and reported that he was scheduled for neck surgery but same had been cancelled. (PX3, 9/15/23) He continued to have significant pain and had difficulty with overhead reaching, climbing and crawling, as these impacted his neck. *Id.* He was given work restrictions. *Id.*

On September 11, 2023, Petitioner returned to Dr. Gornet, who noted that he continued to have neck pain, bilateral trapezius pain particularly to the left, and left shoulder and arm symptoms along with numbness and tingling. (PX7, 9/11/23) Petitioner also had low back pain; however, it had been placed on hold. *Id.*

Section 12 Reports and Deposition of Dr. Timothy VanFleet

At Respondent's request, Petitioner presented for a Section 12 examination with Dr. Timothy VanFleet on March 8, 2023. (RX5) Dr. VanFleet took the history of Petitioner's fall from a ladder and noted his subsequent medical treatment. *Id.* At the time of his examination, Petitioner was performing light duty work with no lifting more than 10 pounds. *Id.* Petitioner reported no arm or leg pain at the time of his exam with Dr. Van Fleet. He had neck pain that was 7/10 and went up to a 9/10 while lying down. *Id.* He also had back pain that reached a 9/10 when walking. *Id.* Dr. VanFleet noted that he did not have a history of difficulties with his neck or back prior to his injury. *Id.*

On exam, Dr. VanFleet noted that Petitioner had tenderness to palpation across the thoracic and paraspinal muscles, pain with simulated truncal rotation and with axial compression of the head and shoulders. *Id.* He had limited lumbar range of motion, which Dr. VanFleet felt was secondary to "self-limitations." *Id.* He had difficulty with rapid alternating movements, but Dr. VanFleet felt that this was due to confusion rather than true myelopathy. *Id.* He felt that Petitioner's January 2023 cervical MRI showed degeneration but no acute disc prolapse. *Id.* He noted that Petitioner had a great deal of axial back and neck pain but stated that there were "non-organic" manifestations of pain during his exam that were concerning for malingering. *Id.* He did not feel Petitioner had objective neurologic findings. *Id.* His diagnosis was chronic nonspecific neck and low back pain which he felt was degenerative, age-appropriate and facilitated by smoking. *Id.* He felt Petitioner's condition was pre-existing and not related to his accident. *Id.* He believed that Petitioner's treatment to date had been reasonable, necessary, and causally connected to his work accident. *Id.* He felt that Petitioner was not in need of further treatment, that he was not a surgical candidate, that Dr. Gornet's proposed four-level cervical disc replacement was "ill-advised" and would be "reckless" if carried out. *Id.* Dr. VanFleet found that Petitioner could return to work in his pre-injury capacity, and that he had reached maximum medical improvement. *Id.*

Dr. VanFleet authored an addendum report on September 11, 2023, wherein he reviewed additional medical records as well as Dr. Gornet's deposition transcript. (RX6) His review of additional medical records did not change the opinions he outlined in his prior report. *Id.* Dr. VanFleet referenced an article written by Dr. Gornet, which was published in the International Journal of Spine Surgery regarding long term outcomes of disc arthroplasty at three and four levels; however, Dr. VanFleet felt that the study was not sufficient as it did not provide a control group, and was graded as a level evidence of 4 "which means this is merely a publication of [Dr. Gornet's] data and is not to be taken by practicing surgeons as either a means for conducting their practice or changing their practice in any way. In laymen's terms level 4 evidence means observe but do nothing...until more studies, which are better studies, are conducted which would support changing practice habits." *Id.* Dr. VanFleet testified that Level 1 is the most profound level of evidence, and level 5 is the lowest. (RX 7, p. 283) He also referenced Dr. Gornet's article in the Journal of Bone and Joint Surgery wherein, again, there was no

control group, thus calling into question the data. (RX 6). Dr. VanFleet noted that no articles in the current literature support the use of a four-level cervical disc arthroplasty in the treatment of individuals with axial neck pain. *Id.* Dr. Van Fleet goes on to state that the multilevel cervical disc arthroplasty for individuals with axial neck pain is a “non-proven procedure,” without support in the literature, and is not the standard of care. *Id.*

Dr. VanFleet testified via evidence deposition on September 20, 2023. (RX7) He testified consistent with his reports. In regard to the reasonableness of Dr. Gornet’s proposed four-level cervical disc arthroplasty, Dr. VanFleet testified that it is “not going to work,” and the literature supports his position that axial neck pain is a contraindication for a disc arthroplasty, even at a single level, let alone four levels which he testified was “absurd” and “preposterous.” (RX 7, pp. 280, 286). Moreover, Dr. VanFleet testified that Petitioner, while trying to cut down, is still a pack a day smoker for 49 years which has “accelerated and facilitated” his degenerative disc disease and impairs the microvasculature in the body. (RX 7, pp. 268, 274, 277-278).

On cross, Dr. VanFleet admitted that herniations, bulges and protrusions seen on an MRI cannot be dated. *Id. at 48.* Dr. VanFleet stated that he likes disc arthroplasty, that it is a “great operation,” and that if he had an appropriate patient on which to perform an arthroplasty at three levels, he would do so. *Id. at 31, 45.* He agreed that Petitioner had no prior problems with his cervical spine, he was not aware of any prior cervical treatment, x-rays, MRIs or CT scans, and he agreed that Petitioner was not on any medication for his arthritis prior to the accident. *Id. at 45, 53, 54.*

Deposition of Dr. Matthew Gornet

Dr. Gornet testified via evidence deposition on August 14, 2023. (PX11) He testified consistent with his medical records. He is an orthopedic surgeon whose practice is devoted to spine surgery. *Id. at 4.*

Dr. Gornet performs multilevel cervical disc replacement surgeries several times per week and has been performing multilevel procedures for nearly 15 years. *Id. at 6.* He testified that he has published the world’s largest series on multilevel cervical disc replacements, and his patients who were indicated for such procedures have done very well. *Id. at 6.* He stated that the complications for multilevel disc replacements are similar to those at one or two levels and their outcomes are just as good, so multilevel procedures provide significant benefit to patients without significantly increasing the risk. *Id. at 6.*

Dr. Gornet testified that Petitioner’s mechanism of injury was consistent with a cervical and lumbar spine injury because any fall can place a sudden mechanical load which disrupts pre-existing asymptomatic degenerative disc disease. He felt that Petitioner’s work injury caused an aggravation of his pre-existing condition and an internal disc injury. *Id. at 12-14.*

Dr. Gornet testified that Petitioner had “already tried for the most part and failed conservative measures, and felt that Petitioner needed surgery related to his June 7, 2022 work accident. *Id. at 14-16.* The basis for his opinion was that Petitioner had a significant fall, that his MRI was compelling for multilevel disc injury, and that he initially had shoulder symptoms, which are a known referral for the cervical spine, but he did not sustain major shoulder injury. *Id. at 15, 16.* He stated that his treatment of like or similar patients, and the publications he has authored on axial neck pain and multilevel disc replacements, are supportive that Petitioner’s symptoms would benefit from treatment. *Id. at 16.*

Dr. Gornet disagreed with Dr. VanFleet’s interpretation of Petitioner’s MRI scan and stated that there was clear objective pathology on the MRI, and that same was detailed in the radiologist’s report. *Id. at 17.* He disagreed that Petitioner had severe facet changes at C5-6 and C6-7 and stated that his facet at those levels were normal. *Id. at 17.* He disagreed with Dr. VanFleet’s statement that Petitioner’s symptoms were not organic, as Petitioner has clear objective pathology that support his symptoms. *Id. at 17, 18.* He disagreed with Dr. VanFleet that

Petitioner was at maximum medical improvement because there is peer-reviewed, published medical treatment that will help his symptoms. *Id.* at 17, 18.

Regarding Dr. VanFleet's opinion that Petitioner had a history of long-standing degenerative disc disease, Dr. Gornet stated that degeneration is a normal part of life but is not necessarily associated with symptoms. *Id.* at 18, 19. He explained that pre-existing degeneration does not mean pre-existing symptoms, and Petitioner had been working full duty for Respondent for six-and-a-half years until his accident, and there was no indication that he had an active problem prior to his injury. *Id.* at 18, 19. He stated that if not for Petitioner's work injury, he did not believe that Petitioner would be recommended any treatment. *Id.*

Dr. Gornet disagreed with Dr. VanFleet's opinion that a four-level disc replacement was ill-advised for Petitioner, and referenced his article which documents how treatment in patients like the Petitioner have benefited significantly. *Id.* at 19, 20. He testified that he does not expect Petitioner to improve without the surgery he is recommending. *Id.* at 20.

On cross-examination, Dr. Gornet agreed that Petitioner did not strike his neck during the fall but stated that the injury was caused due to mechanical load. *Id.* at 24, 25. He explained that in a car accident, a person may have multiple clear injuries to their spine; however, nothing strikes their neck. *Id.* He stated Petitioner's accident was the same situation of having a set movement and deceleration that this could easily injure body parts, especially those that are flexible such as the cervical spine. *Id.*

Regarding Petitioner's initial complaints of shoulder pain, Dr. Gornet testified that Petitioner has obvious disc herniations in the area that would produce shoulder pain, and in hindsight, knowing that he did not have significant shoulder injury, he felt Petitioner's shoulder pain was likely referred from his cervical spine. *Id.* at 25. He testified that Petitioner's presentation of shoulder pain was not unusual, as he sees people who have significant shoulder pain that is coming solely from the cervical spine. *Id.* at 26.

He testified that Petitioner's August 2022 cervical spine MRI shows clear evidence of pathology and stated that although the MRI did not have foraminal views, there is an acute appearance of the disc at C5-6 and C6-7 on image eight of 16, and a fragment on the right at C6-7 on image 10 of 16. *Id.* at 26, 27.

Dr. Gornet testified that the exam findings in his January 9, 2023 note of decreased fingertips sensation on the left and weakness at the biceps and wrist dorsiflexion were objective tests, and there was no subjectivity related to those findings. *Id.* at 28, 29. He testified that Petitioner's neurologic exam was one component of the decision to recommend surgery but was not the sole determining factor. *Id.* at 30. He testified that even if Petitioner's exam was hypothetically normal, he would still need surgery if he had pain and symptoms that were unresponsive to conservative care, his subjective complaints correlate with his objective imaging and physical exam, combined with Dr. Gornet's knowledge of treating similar patients with good results. *Id.* at 30, 31.

Regarding Petitioner's low back, Dr. Gornet testified that if his neck surgery went well, he would recommend physical therapy, injections and possibly radiofrequency ablations (RFAs) in his lower back prior to recommending any surgery. *Id.* at 33-35. He stated that it is good that Petitioner is working light duty; however, he does not believe Petitioner can perform more than light duty work as this would flare his symptoms, create a crisis situation and become detrimental to Petitioner. *Id.* at 35.

Pre-Accident Medical Records

Respondent's Exhibit Three contained records from a visit to PA Leon on August 13, 2020, wherein Petitioner reported that he had right hip pain that had been present for three days. (RX3) He indicated he might have pulled his hip while lifting, and that his pain was better than it had been in the few days prior. *Id.* He denied

distal numbness but did feel some weakness and had experienced two falls. *Id.* He denied back pain. *Id.* His exam showed pain with Patrick sign testing but he had normal strength and no tenderness. *Id.* He was instructed not to work through August 13, 2020, was given medication and was instructed to continue chiropractic treatment. *Id.* On August 24, 2020, Petitioner returned to PA Leon for flank pain in his right lower back that radiated to the front groin area and down his right leg. *Id.* On September 8, 2020, PA Leon indicated that Petitioner had right hip pain, numbness in the right great toe and weakness in the right leg. *Id.* He was negative for back pain. *Id.* An MRI of the spine lumbar spine was ordered, but there is no indication that same ever took place. *Id.* There was no mention of any neck symptoms.

Records from Memorial Hospital indicated that on January 1, 2021, Petitioner was seen in the emergency department for alcohol intoxication followed by a syncopal episode. *Id.* It was noted that he had chest pain; however, the record is incomplete for this date of service and cuts off after one page, and therefore, is not clear whether Petitioner's pain was muscular or cardiac-related. *Id.* There was no mention of Petitioner's neck or back in the January 1, 2021 note. *Id.*

Petitioner testified that prior to June 7, 2022, did not have any symptoms in his neck, had not ever been recommended for surgery for same, nor had he missed any time from work due to the same. (T. 25, 26) Moreover, Petitioner testified that he did not have any significant low back symptoms prior to his work accident, and had not missed any time from work due to the same. (T. 26, 27)

Petitioner's Current Complaints & Work Status

After Petitioner's work accident, he worked light duty for Respondent, but there were many things that he testified that could not do due to his injury. (T. 24, 25) He testified that he could not climb a ladder or reach overhead, and had difficulty looking up and getting up from a low position. (T. 25) Prior to his accident, he had been able to perform his job without similar issues. (T. 25) He worked light duty for Respondent until January 10, 2024, after which Respondent did not accommodate his restrictions. (T. 25)

Petitioner would like to undergo the treatment recommended by Dr. Gornet because he wants to continue working. (T. 23) He has significant symptoms in his low back that makes it difficult for him to walk. (T. 28, 29) He testified that he was in pain at Arbitration due to sitting and stated that he cannot sit or walk for very long and that his symptoms have been "like that ever since [he] fell." (T. 28, 29, 34, 39) He currently experiences symptoms in the left side of his neck from the base of his skull to the base of his cervical spine. (T. 28) He testified that his neck symptoms were currently "miserable," that he was in pain, that it was a feeling he had "never had before" and that his symptoms seemed to be getting worse. (T. 27, 28) Petitioner testified that pain in his left arm and left shoulder comes and goes, depending on his activities, such as reaching for something which "lets him know." Prior to his accident, he had no difficulty lying in bed; however, since the accident, he cannot sleep in his bed or lie down due to significant pain and must sit at his bar counter when he attempts to sleep. (T. 29) He testified that he never experienced any of these symptoms prior to June 7, 2022. (T. 29)

CONCLUSIONS OF LAW

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

A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the workers' compensation claimant's injury. *Shafer v. Illinois Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC. 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.

Petitioner did not have problems of any significance with regard to his neck, back or shoulders prior to his fall on June 7, 2022. (T. 25-27) Petitioner suffered a significant accident when he fell 15 to 20 feet from a ladder onto a steel barrel that day. (T. 15, 16) Following the accident, he was in acute distress with multiple areas of severe pain. (PX3, 6/7/22; T. 16, 17) The Arbitrator agrees with Dr. Gornet that Petitioner's mechanism of injury is consistent with a cervical and lumbar spine injury, as he suffered a fall from a significant height which placed a sudden mechanical load on his spine. (PX11, 12-14)

Emergency room records from the date of the accident show that Petitioner reported pain, and there was concern for a spinal injury, as a cervical spine CT was performed. (PX3, 6/7/22) Petitioner reported symptoms in his neck at back at his initial follow up appointment with PA Leon three days following his accident. (PX3, 6/10/22) The record shows that Petitioner's back and neck symptoms appeared in the record immediately following his accident and were consistent throughout the course of his treatment.

The Arbitrator notes that Dr. Basho concluded that Petitioner had significant pain after his fall, that he had cervical and lumbar radiculopathy, and that Petitioner's left upper extremity numbness was an acute exacerbation of his chronic stenosis. (PX4, 9/23/22, 11/4/22)

Respondent's examiner, Dr. VanFleet confirmed that Petitioner had no prior problems with his cervical spine and was not aware of any prior treatment regarding same. (RX7, pp. 43, 53, 54). While Dr. VanFleet did not believe that Petitioner's current condition of ill-being in his spine was related to his fall at work, he did, however, find that all of Petitioner's treatment to his spine was reasonable, necessary and related to this work injury. (RX5; RX7, p. 54) This internal inconsistency in Dr. VanFleet's opinion cannot be reconciled, and undermines his opinion in regard to causation.

Dr. Gornet opined that if Dr. VanFleet's diagnosis of degeneration in and of itself was correct, that same would have caused Petitioner to seek treatment prior to his work injury; however, there is no evidence of prior treatment or symptoms, and Petitioner had been working full duty with no reported issues prior to his work accident. (PX7, 7/6/23; T. 25) Dr. Gornet testified that pre-existing degeneration does not equate to pre-existing symptoms, that Petitioner's work accident aggravated his underlying conditions, and if not for Petitioner's work injury, there would not be treatment recommended for his underlying degeneration, which was asymptomatic prior to his fall at work. (PX7, 1/9/23; PX11, 18, 19)

The record is clear, Petitioner's fall from a significant height caused his previously asymptomatic spine condition to become symptomatic. Given the chain of events, the opinion of Dr. Gornet, and the record taken as a whole, the Arbitrator finds that Petitioner has met his burden of proof with regard to causation, and that his lumbar and cervical spine complaints are causally related to his June 7, 2022 work accident.

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

Respondent's examiner, Dr. VanFleet opined that Petitioner's medical treatment through his first report, dated March 8, 2023, which included MRIs, and an injection was reasonable, necessary and causally related to his work accident. (RX5).

On August 14, 2023, Dr. Gornet testified that all Petitioner's treatment was reasonable, necessary and causally related to his work accident. (PX 11, p. 21).

Based upon the Arbitrator's above findings on the issue of causal connection, and the opinions of Dr. VanFleet and Dr. Gornet, the medical services provided to Petitioner post-accident were reasonable and necessary. The Respondent has not paid all appropriate charges for these reasonable and necessary medical services.

The Arbitrator orders the Respondent to pay all reasonable and necessary medical services as set forth in Petitioner's Exhibit 1, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Issue (K): Is Petitioner entitled to any prospective medical care?

Petitioner testified at hearing that he has significant symptoms localized in his neck and low back that cause difficulty with his activities of daily living such as sitting, walking and lying down. Petitioner testified that his symptoms come and go in his left arm and shoulder, depending on what he does, like reaching, which "let's me know." (T. 28-29). The Arbitrator found Petitioner to be a credible historian of his accident, injuries, and current symptoms. Petitioner appeared to be in pain at hearing, needed a break during testimony, and moved slowly and in a protective manner.

Respondent's Section 12 examiner, Dr. VanFleet testified that Petitioner presented to him with axial back pain, and that Dr. Gornet's proposed four-level cervical disc replacement surgery is not medically indicated given Petitioner's presentation to him on March 8, 2023, and would not be a successful surgery. Dr. VanFleet also cautioned that Dr. Gornet's proposed surgery was ill-advised and reckless. Dr. VanFleet testified that he performs multilevel cervical disc arthroplasties and that he would perform a three-level operation on an appropriate patient, but that Petitioner was not an appropriate candidate given that axial pain is a contraindication for a disc replacement surgery. Dr. VanFleet found that Petitioner was MMI and required no further care. (RX6; RX7, pp. 31-45)

Petitioner initially saw Dr. Rahul Basho for his cervical complaints, trying medication, eight PT visits, and one epidural injection in his cervical spine, all of which Petitioner reported had been ineffective, despite mild pain and difficulty in completing his PT exercises. Dr. Basho opined that Petitioner's left upper extremity numbness was likely an acute exacerbation of his chronic foraminal stenosis. Dr. Basho found that no surgical intervention or formal restrictions were needed from a spine standpoint, only from a pain standpoint, and Petitioner should complete an FCE should his pain continue. (PX5, PX4)

Dr. Gornet testified that he was confident that he could help Petitioner return to work full duty, by performing a four-level cervical disc replacement surgery, given his experience in treating patients with multi-level disc injuries and axial neck pain. (PX7, 7/6/23; PX11, pp. 16-18, 33).

Petitioner requested Dr. Gornet's four-level cervical surgery be authorized, however, Petitioner's approximately 50-year pack-a-day smoking habit continues. Dr. Van Fleet provided unrebutted and credible testimony that Petitioner's smoking impaired the microvasculature in his body and accelerated his degenerative spine condition. Petitioner has testified that he would like to return to work full duty as a welder. On the date of accident, Petitioner was 62 years old. On the date of hearing, the Petitioner was 64 years old. Litigation and any medical care will require additional time. Moreover, Petitioner worked in a heavy labor position, so even in a best-case scenario, recovery and return to full duty work will be challenging given these variables. The Act provides the Petitioner with rights, but also with responsibilities in his recovery. For Petitioner to request a significant surgical intervention, but without making the necessary medically indicated lifestyle changes within his control, at his advancing age, to maximize the probability of success of that intervention, is problematic.

Moreover, there is a vast chasm in the findings, interpretations of the medical literature and its weight, and recommendations presented to the Arbitrator. Given this, after the close of proofs, the Arbitrator met with the parties and requested that they consider sending Petitioner to an agreed spine surgeon for evaluation. The parties were unable to agree in proceeding in this manner.

Given the above findings in regard to causal connection and the record as a whole, the Arbitrator is not persuaded by the medical recommendation to do nothing to alleviate Petitioner's current condition of ill being in his spine.

The Arbitrator is equally unpersuaded that a four-level cervical disc replacement is reasonable and necessary, given Dr. Van Fleet's testimony, which raised a red flag, as well as Dr. Basho's finding that surgery was not indicated despite Petitioner's radicular symptoms, and considering the minimal course of conservative care undergone by the Petitioner in regard to his cervical spine. Moreover, Dr. Gornet initially recommended a three-level disc replacement with the most significant issues being from C4-7 with a potential posterior foraminotomy at C3-4, PX7 p. 5, then six months later he amended his recommendation to a four-level disc replacement from C3-7 with a potential posterior foraminotomy at C3-4. (PX 7, p. 7). Dr. Gornet did not adequately address this change from a three-level to four-level disc arthroplasty in his notes or deposition.

The Arbitrator agrees with Petitioner's treating physicians that medical care is necessary to cure and relieve the effects of Petitioner's work injury in both his cervical and lumbar spine. However, the Arbitrator finds that the Petitioner has failed to prove that Dr. Gornet's proposed four-level cervical disc arthroplasty for Petitioner's cervical spine is reasonable and necessary.

In regard to Petitioner's lumbar spine, during Respondent's cross-examination, Dr Gornet testified that he recommended Petitioner participate in physical therapy, receive epidural steroid injections, and have RFAs. Given the findings in regard to causal connection, the Arbitrator finds these conservative measures to be reasonable and necessary. Respondent is ordered to provide and pay for this medical treatment.

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

Incorporating the above, the Arbitrator finds that Respondent is liable for temporary total disability benefits for 5 and 1/7 weeks, commencing January 10, 2024 through February 14, 2024.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC024058
Case Name	Christie Dillman v. State of Illinois - Veterans Home of Anna
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0375
Number of Pages of Decision	15
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 9/11/2025

/s/ Frank Soto, Commissioner

Signature

22 WC 24058

Page 1

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

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Christie Dillman,

Petitioner,

vs.

NO: 22 WC 24058

State of Illinois - Veterans Home of Anna,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of 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 May 24, 2024 is hereby affirmed and adopted.

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

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

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

22 WC 24058

Page 2

SEPTEMBER 11, 2025

O: 7/23/25

FJS/as

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	22WC024058
Case Name	Christie Dillman v. State of Illinois/Veterans Home of Anna
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 5/24/2024

/s/ Bradley Gillespie, Arbitrator
Signature

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

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



May 24, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
 COUNTY OF WILLIAMSON)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

CHRISTIE DILLMAN

Employee/Petitioner

v.

DEPARTMENT OF VETERAN'S AFFAIRS

Employer/Respondent

Case # **22** WC **024058**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Herrin**, on **April 2, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **July 3, 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 **\$36,818.08**; the average weekly wage was **\$708.04**.

On the date of accident, Petitioner was **40** 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 of **any benefits paid** for TTD, \$- for TPD, \$- for maintenance, **and any benefits paid** for other benefits (**service connected days**), for a total credit of **any benefits paid**.

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

ORDER

Respondent shall pay the reasonable and necessary medical services of outlined in Petitioner's group exhibit related to the treatment of the injury, as provided in § 8(a) of the Act.

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

Respondent shall pay Petitioner further temporary total disability benefits of **\$472.03/week** for **32** weeks, for Petitioner's periods of disability from January 5, 2023, through March 1, 2023, and from May 8, 2023, through October 24, 2023, as provided in § 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$424.82/week** for **100** weeks, because the injuries sustained caused the 20% loss of the **body as a whole**, as provided in § 8(d)2 of the Act.

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

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

Bradley D. Gillespie

Signature of Arbitrator

May 24, 2024

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTIE DILLMAN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case Nos: 22WC024058
	)	
STATE OF ILLINOIS/DEPARTMENT	)	
OF VETERAN'S AFFAIRS,	)	
	)	
Respondent.	)	

DECISION OF ARBITRATOR**FINDINGS OF FACT****Background**

At the time of the injury, Petitioner was a 40-year-old certified nurse assistant for the Illinois Veteran's Home of Anna. (Tr. p. 12; Arb. Ex. 1) She is responsible for aiding residents with activities of daily living such as feeding and bathing. (Tr. p. 12) The parties stipulated she suffered accidental injuries that arose out of and in the course of her employment when on July 3, 2022, she injured her lower back and groin while lifting a recipient and placing him in a wheelchair. (Tr. pp. 12-13) She described feeling an immediate pop in her groin followed by stabbing pain in her left lower back. (Tr. p. 13) Petitioner candidly acknowledged suffering a prior back injury in 2007 bearing claim number 08WC000307, which required surgery, and Respondent offered the prior IME reports and the Arbitration Decision into evidence. (RX #5, RX #6, RX #7) At the time of her current injury, however, Petitioner had not required any medical care for a number of years and was working full duty without the assistance of any medication. (Tr. pp. 15, 17-18) Petitioner also reported that her current pain is different from her previous pain and lateralized to the left. (T.18) Respondent accepts causal connection and liability for expenses up to the date of September 20, 2022, but disputes causation and liability for any treatment or temporary benefits thereafter. (Tr. p. 5)

Medical Treatment

Petitioner presented to the Convenient Care Clinic on July 5, 2022, with complaints of abdominal pain after she pulled her lower back and groin from "lifting a resident up into a chair". (PX #3) Petitioner's lumbar hardware appeared in place on x-ray, but physical examination was positive for arthralgia / left hip pain with internal rotation and back pain with left lumbar paravertebral muscle tightness and tenderness to palpation. *Id.* Petitioner was taken off work, given medication and conservative care instructions, and instructed to follow up in five (5) days. *Id.* Petitioner returned again on July 10th with persistent low back pain and left groin pain with

popping, and physical exam findings were unchanged. *Id.* She was given a steroid injection, placed on sedentary duty, and instructed to see her primary care physician. (PX #3)

Petitioner presented to Heartland Occupational Health on July 12, 2022, and provided a history of her present injuries, as well as her prior history of lumbar fusion was noted along with her current complaints of low back and left groin pain. (PX #5) Examination showed tenderness over the left sciatic joint, slowed reflexes over the patellar and Achilles deep tendon, back pain and tightness with forward flexion at about 80 degrees and with twisting, and left groin discomfort. *Id.* Petitioner was diagnosed with left-sided sciatic and lower abdominal pain, placed under restrictions, prescribed a prednisone taper, and referred to physical therapy. *Id.* Petitioner was seen for follow-up on July 19th, at which time she reported her pain was worsening and advised that she had numbness with her pain at the base of her sacrum. *Id.* Physical therapy was put on hold while Petitioner was kept under restrictions and referred for imaging and consultation with her previous surgeon. (PX #5)

On July 30, 2022, Petitioner was evaluated in the Union County Hospital Emergency Room for her low back and groin pain which had begun to radiate down her left lower extremity and worsened with walking. (PX #4) Petitioner reported she could not see her surgeon until September and grew concerned when her pain grew significantly and she began “dragging her leg.” *Id.* The attending clinician noted that Petitioner’s symptoms were consistent with sacroiliitis, and repeat x-rays were performed to make sure Petitioner did not suffer from occult fracture. *Id.* These were negative, and Petitioner was given additional prednisone to manage her symptoms. *Id.*

Petitioner saw Dr. Rutz on September 8, 2022, reported the history of her current injuries, and reported low back, left groin, and left buttock pain with frequent groin popping that increased her pain and pain and paresthesia into the left anterior thigh. (PX #6) Physical examination demonstrated a positive straight leg test of the left lower extremity reproducing left buttock pain. *Id.* He suspected lumbar radiculopathy and referred Petitioner for an MRI. *Id.* Petitioner returned to Dr. Rutz on September 20th and reported persistent pain in her left lower back going into her buttock and left medial thigh that was unresponsive to medication. (PX #6) Dr. Rutz obtained the MRI of the lumbar spine which revealed a rent in the annulus on the left at L4-5 with circumferential disc bulges at L3-4 and L4-5 and foraminal stenosis at the same levels. (PX #6; PX #7) Dr. Rutz believed Petitioner’s low back pain was discogenic in origin, but he believed it was premature to consider discography and/or surgical intervention. (PX #6) Instead, he referred Petitioner to Dr. Helen Blake for non-operative care. *Id.* If Petitioner failed this and was unable to live with her symptoms, he would consider discography and possible intervention. *Id.*

On September 26, 2022, Petitioner began treating with Dr. Helen Blake. (PX #8) After reviewing the history of Petitioner’s condition, she noted that Petitioner had multiple impacted areas of her spine, including the L5-S1 level adjacent to L4-5. *Id.* Dr. Blake believed it best to treat the injured L4-5 disc with a left interlaminar epidural steroid injection or transforaminal epidural steroid injection and also believed Petitioner would benefit from a caudal epidural steroid injection given the numbness in Petitioner’s legs. *Id.* She recommended that Petitioner remain under restrictions and avoid any bending or twisting. *Id.*

Dr. Blake administered a left L4-5 transforaminal epidural steroid injection on October 18, 2022, and a left L4-5 interlaminar steroid injection on December 13, 2022. (PX #8) After the first injection, Petitioner reported improvement in her physical function but still suffered numbness, tingling, and increasing pain radiating down her left leg corroborated by positive straight leg raise testing on the left. *Id.* Following the second injection, Petitioner still struggled with increasing pain and diminishing stamina and function. *Id.* On January 9, 2023, Dr. Blake expressed concern, took Petitioner off work, and ordered an MRI. *Id.*

The MRI taken January 11, 2023, continued to show a left foraminal annular tear/fissure with facet arthropathy at L4-5 resulting in bilateral foraminal stenosis, consistent with the previous MRI. (PX #11) Petitioner returned to Dr. Blake on January 23, 2023, and Dr. Blake believed that Petitioner would benefit from additional conservative care. (PX #8) She recommended another transforaminal injection and perhaps a nerve branch blocking and in the meantime kept Petitioner off work. *Id.*

On January 31, 2023, Petitioner received bilateral L4-5 transforaminal epidural steroid with fluoroscopy and reported a post-procedure score of 2-3/10. (PX #8) Dr. Blake also performed bilateral L4-5 median nerve branch blocks on February 21, 2023. *Id.* On February 27, 2023, Petitioner reported only minimal improvement in her symptoms, and she remained unable to meet the lifting demands of her job. *Id.* Dr. Blake advised Petitioner to return to Dr. Rutz and advised her to work only in a sedentary capacity with no patient contact should she need to return to work. *Id.*

Petitioner returned to Dr. Rutz on March 28, 2023, at which time, Dr. Rutz noted that Petitioner continued to have low back pain with radicular features despite conservative care with Dr. Blake. (PX #6) He noted Petitioner's pain generators had been objectively identified on imaging studies, but he also considered the possibility of hardware pain. *Id.* He recommended a CT myelogram and an L4-5 discogram along with additional L4-5 facet blocks. (PX #6; PX #7) Petitioner's CT myelogram showed evidence of some resorption of the L4-5 bulge but a central, broad-based disc protrusion with a cranially extruded objective disc fragment in the left foramen, resulting in moderate-to-severe left-greater-than right foraminal stenosis. (PX #12) Petitioner's discogram results demonstrated moderate-to-severe low back pain (8/10) at L4-5 concordant and identical with her pre-procedure symptoms while imaging demonstrated a full-thickness annular tear to the left of midline with contrast extravasation into the left lateral recess, and L5-S1 decompression instrumentation changes. *Id.* Based upon the results and Petitioner's clinical course, Dr. Rutz recommended disc replacement and ordered a bone density report, which showed acceptable bone mass within expected range for her age, gender, and ethnicity, and an exposure evaluation, which showed no significant contraindication. (PX #6; PX #7; PX #13)

On August 11, 2023, Dr. Rutz performed L4-5 anterior lumbar discectomy and total disc arthroplasty/replacement. (PX #14) Petitioner reported relief in her radicular symptoms during follow-up on the 24th, and Dr. Rutz advised her to remain off work and continue taking anti-inflammatory medication during her recovery. (PX #6) Petitioner continued to improve following surgery, and on October 24, 2023, she only reported discomfort with bending. *Id.* Dr. Rutz allowed her to return to full-duty work at that time, and on December 7, 2023, he placed her at maximum

medical improvement. *Id.* Petitioner reported some residual aching in her back, but she denied radicular symptoms, and she was pleased with her outcome. *Id.*

At Arbitration, Petitioner testified that she gained marked relief from her surgery with complete resolution in her groin pain. (Tr. pp. 18-20) Notwithstanding her excellent outcome, Petitioner testified that still experiences residual symptoms commensurate with her level of activity particularly with bending, lifting, and prolonged standing. (Tr. pp. 21-22) She takes over-the-counter Tylenol two to three (2-3) times per day for her mild-to-moderate pain and continues to perform the exercises recommended by Dr. Rutz to regain her low back strength. (Tr. pp. 21-22)

Opinion of Dr. Robert Bernardi

Respondent had Petitioner examined by Dr. Robert Bernardi on June 20, 2023. (RX #2) He reviewed Petitioner's records from her prior and current work injuries and noted physical examination findings of tenderness around the left sciatic notch and reduced reflexes at the knee and ankle without evidence of malingering/Waddell's signs. *Id.* He concluded that there were "objective findings" on Petitioner's physical examination, but "no subjective or objective findings on her neurological examination." *Id.* He disagreed with characterizing Petitioner's L4-5 disc injury as a "rent" in the annulus and stated that Petitioner's L4-5 fissure was present before her 2022 work accident. *Id.* He did not believe the L4-5 pathology was post-traumatic in nature and stated that it was simply the result of age and degeneration, and in most cases, was asymptomatic. (RX #2) He stated, "While the high intensity zone seen in [Petitioner's] L4-5 disc is an objective finding, it cannot be concluded that it was caused by her work accident or has any relation to her ongoing complaints." *Id.* His impression of Petitioner's overall condition was L5-S1 pseudoarthrosis, L4-5 degenerative disc disease (spondylosis), and non-specific low back pain and non-radicular left leg pain. *Id.* He found no causal relationship between the L4-5 pathology and Petitioner's work activities on July 3, 2022. *Id.* Nevertheless, he acknowledged that it was "reasonable to conclude that this lady's acute discomfort might have been work-related. . ." (RX #2) Yet, he believed Petitioner's current chronic complaints had nothing to do with her work accident. *Id.* Though he found no evidence of malingering, he hinted that Petitioner's symptoms might have been impacted by non-organic factors such as litigation or anxiety and depression. *Id.*

With respect to Petitioner's treatment, he did not believe that her steroid injections were reasonable, because he did not believe she suffered from radiculopathy. (RX #2) He did not believe Petitioner needed facet injections, as he felt her facets were normal; nor discography, as he did not believe it was safe or useful; nor additional surgery, as he did not believe Petitioner was a candidate for same. *Id.* He believed her long-term outcome would be poor, especially given his perception that Petitioner's response to her prior surgeries was "far from ideal". *Id.* He believed Petitioner reached maximum medical improvement from her July 3, 2022, accident on September 20, 2022, when she had her lumbar MRI. *Id.* He did not believe Petitioner required any restrictions, and in so voicing his belief, deemed it "laughable" that in spite of her prolonged recovery and residual complaints from her prior injuries she was able to return to unrestricted work. (RX #2) He remarked, "Her residual problems were thought to be severe enough to warrant very stringent restrictions. The notion that after this amount of time she somehow completely recovered is not

plausible. Instead, her ability to return to unrestricted work as a CNA – without any apparent issues – leads me to question the true severity if not the actual existence of the symptoms she reported between 2007 and 2017.” *Id.* In his addendum report issued on August 11, 2023, Dr. Bernardi commented on Petitioner’s January 2013 MRI and stated that it did not alter his opinion espoused in his June 2023 report. (RX #3)

Respondent deposed Dr. Bernardi, and his testimony on direct examination was consistent with his opinions as expressed in his reports. (RX #4) He reiterated that it was conceivable based on the description of the accident that Petitioner suffered a muscular sprain or strain, but he believed this would have resolved in a matter of days or weeks and was unrelated in any way to Petitioner’s ongoing complaints for which he had no plausible explanation. (RX #4 p. 12) He felt Petitioner’s complaints were the same as those voiced in 2009 and 2012, and he found no evidence of injury to the correlating L5 nerve root. (RX #4 pp. 19-20) He also did not find any correlation between an injury to Petitioner’s back and the reported popping in her groin. (RX #4 p. 23)

On cross-examination, Dr. Bernardi acknowledged that his evaluations are typically at the request of insurance carriers, employers, nurse case managers, and attorneys. (RX #4 pp. 36-37) He admitted that the mechanics of Petitioner’s 2022 accident could cause an L4-5 disc injury. (RX #4 p. 40) He admitted that he found no signs of symptoms magnification or malingering during his examination. (RX #4 p. 41) He admitted he had no record of any treatment for Petitioner’s back or groin from the time she was released in February of 2017 until the July 2022 work accident. (RX #4 p. 43) He had no evidence Petitioner suffered any symptoms or complaints during that time, and he acknowledged that Petitioner advised him during her IME that she was doing well and had returned to work without restrictions prior to the 2022 accident. (RX #4 p. 44) He also admitted that Petitioner’s prior complaints were greater on the right side rather than her left. (RX #4 p. 45) Dr. Bernardi acknowledged that if Petitioner was asymptomatic or mildly symptomatic prior to July 2022, then it “goes without saying that she had not reached her preinjury baseline”, but he believed that highly unlikely. (RX #4 p. 65)

On further questioning, Dr. Bernardi admitted that he could not state with 100 percent certainty that Petitioner’s L4-5 annular fissure was present before her 2022 work accident; but in his opinion it was a degenerative finding. (RX #4 pp. 49-50) When asked whether an annular fissure could be painful, he responded, “I don’t think anybody really knows that.” (RX #4 p. 50) He agreed that Petitioner’s clinical course was inconsistent with his diagnosis of a sprain/strain. (RX #4 p. 57) Yet, he continued to believe that Petitioner had non-organic comorbidities that were playing a part in her report of pain and that her complaints were out of proportion to any objective findings. (RX #4 p. 52) With regard to Petitioner’s treatment, he admitted that there are those within the medical community that acknowledged the diagnostic benefit of injections aside from therapeutic use and embrace discography, but he was not one of those physicians. (RX #4 pp. 58-61)

Dr. Bernardi admitted that it was possible for someone with Petitioner’s pathology to be asymptomatic, and he acknowledged that an asymptomatic condition can be aggravated and made symptomatic by a traumatic injury without a discreet change in pathology. (RX #4 pp. 70-71) He felt, however, that reaching such a conclusion in Petitioner’s case would be

“speculative”. (RX #4 p. 71) Nevertheless, he acknowledged, “[I]t’s kind of hard to get my mind wrapped around how that would be possible, but I imagine it’s possible.” *Id.*

Opinion of Dr. Kevin Rutz

Dr. Rutz also testified by way of deposition. (PX #15) He testified that he initially saw Petitioner on July 24, 2012, for an independent medical examination. (PX #15 pp. 6-7) He noted that it had been some five (5) years since she had care for her lumbar spine prior to her July 2022 work accident. (PX #15 p. 9) He initially treated Petitioner conservatively with injections and facet blocks, which helped him “determine whether or not a portion of her back pain was coming from degenerative changes of those joints.” (PX # 15 p. 12) Since Petitioner’s facet blocks did not provide relief of her pain, he was able to conclude that her joint arthritis was not her pain generator. *Id.*

Dr. Rutz testified that he is a member of the North American Spine Society, and he has been using discograms like the one he ordered for Petitioner as “an extension of the physical exam” for 20 years. (PX #15 pp. 12-13) A discogram also serves as a diagnostic test to identify or confirm a pain source. *Id.* He stated that it requires considerable skill on the part of the radiologist to perform such procedures and produce reliable results. (PX #15 pp. 13-14) Thus, he only uses two radiologists which he found to be the most reputable, Dr. Greg Cizek and Dr. Matthew Ruyle. *Id.* With regard to using a control level for the procedure, he testified that it was not necessary to involve another level in the procedure when there was such a small frame of reference as to what level was causing Petitioner’s problem. (PX #15 pp. 14-16) Dr. Rutz stated that he never observed any Waddell’s signs or detected any malingering during any point in which he evaluated Petitioner past or present. (PX #15 p. 16)

Dr. Rutz disagreed with Dr. Bernardi’s assessment and believed that Petitioner suffered an injury to her L4-5 disc in the work accident on July 3, 2022. (PX #15 p.19) He acknowledged that Petitioner had a “complicated lumbar history in the past”, but stated:

. . . [A]t my visit with her after she had that [prior injury] fixed she still had some complaints, but then after that she returned to work, and there’s no history of lumbar problems for about five years. And then she has an appropriate mechanism of injury at work. It’s – there’s documentation of this injury almost immediately, and then she’s had persistent and consistent back and left leg symptoms from the time of that injury up until she had her surgery with me. So that to me seemed like a fairly straightforward case. (PX #15 pp. 19-20)

He further noted that Petitioner’s positive response to his recommended treatment further bolstered his opinion. (PX #15 p. 20)

On cross-examination, Dr. Rutz testified that Dr. Bernardi’s definition of “fissure” was not his; Dr. Rutz stated that he was identifying a small tear in the annulus of the L4-5 disc and not something degenerative. (PX #15 pp. 33-34) Dr. Rutz noted that it wasn’t feasible to measure the age of an annular tear by how an MRI looks, but in Petitioner’s case, the evidence pointed to traumatic injury, given the temporal correlation and new variation of her reported complaints. (PX #15 pp. 35, 42) He noted that while the buttock pain was bilateral in 2016, it was only left-sided

in 2022. (PX #15 pp. 42-43). He also noted that Petitioner's anterior thigh symptoms were new. *Id.*

CONCLUSIONS OF LAW

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

In addition to expert medical testimony, circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove a causal nexus between an accident and the resulting injury, such as a chain of events showing a claimant's ability to perform manual duties before accident but decreased ability to still perform immediately after accident. *Pulliam Masonry v. Indus. Comm'n*, 77 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 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]. "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). 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). 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).

Based upon the preponderance of the medical evidence and the circumstantial evidence, the Arbitrator finds the opinion of Dr. Rutz more credible than that of Dr. Bernardi. The evidence plainly demonstrates that Petitioner had not required any care and treatment for some five (5) years prior to the 2022 work accident. Her contemporaneous and well-documented onset symptoms following her new injury also differed in character and persisted despite conservative care. Both Dr. Bernardi and Dr. Rutz agreed that Petitioner exhibited no evidence of malingering. Dr. Rutz identified a tear in the annulus at L4-5, which Dr. Bernardi agreed could be a source of pain. While Dr. Bernardi characterized this as degenerative rather than traumatic, such a distinction has *de minimis* value where the evidence shows that any such preexisting condition would have been aggravated by the work injury. Petitioner did not return to baseline following the accident, undermining Dr. Bernardi's opinion that Petitioner only suffered a sprain/strain from which she reached maximum medical improvement. Moreover, Dr. Bernardi's cynicism surrounding Petitioner's prolonged recovery from her prior complaints and her eventual return to full,

unrestricted duty without complaint certainly does not lend credibility to his opinion. Consequently, the Arbitrator finds Dr. Rutz's opinion more persuasive and concludes that Petitioner met her burden in proving that her current condition of ill-being is causally connected to her undisputed work accident on July 3, 2022.

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). 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 upon the above findings as to causal connection, the Arbitrator finds and concludes that the medical treatment rendered to Petitioner was reasonable and necessary to treat her work-related injuries. The Arbitrator finds the opinion of Dr. Rutz more credible and well-reasoned than those expressed by Dr. Bernardi. Petitioner's limited improvement with conservative care and positive response to surgical care supports a finding that her care was reasonable, necessary and causally related to her July 3, 2022 accident. Respondent shall therefore pay the reasonable and necessary medical expenses outlined in Petitioner's group exhibit according to the Illinois Workers' Compensation Fee Schedule or at a rate negotiated with the provider, whichever is less.

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

The law in Illinois holds that "[a]n 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 (Ill. 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 (Ill., 1990) citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill. App. 3d 739, 743, 467 N.E.2d 1018, 1021 (1984).

Respondent disputes liability for January 5, 2023, through March 1, 2023, and from May 8, 2023, through October 24, 2023, a total period of 32 weeks, based on its dispute of causal connection. Based upon the above findings above, the Arbitrator finds and concludes that Petitioner is entitled to the claimed 32 weeks of temporary total disability benefits.

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 places no weight on this factor.
- (ii) **Occupation:** Petitioner has returned to work full duty but testified that she continues to have an activity-determined level of residual symptoms. (T.21-22) Given the physical nature of her job, the Arbitrator places greater weight on this factor.
- (iii) **Age:** Petitioner was 40 years old at the time of her injury. Due to her relatively young age, Petitioner must yet live and work with her disability for a number of years. The Arbitrator places some weight on this factor.
- (iv) **Earning Capacity:** As there is no direct evidence of reduced earning capacity, the Arbitrator places no weight on this factor.
- (v) **Disability:** As a result of her accident, Petitioner suffered an L4-5 tear that required disc replacement surgery above her previously operated L5-S1 level. At Arbitration, Petitioner testified that despite her excellent outcome, she still has residual symptoms commensurate with her level of activity particularly with bending, lifting, and prolonged standing. (Tr. pp. 21-22) She takes over-the-counter Tylenol two to three (2-3) times per day for her mild-to-moderate pain and continues to perform the exercises recommended by Dr. Rutz to regain her low back strength. *Id.* The Arbitrator finds Petitioner's complaints are proportionate to her injury and supported by the medical evidence in the record, and therefore, places greater weight on this factor.

Based upon the foregoing factors, the Arbitrator finds that Petitioner suffered serious and permanent injuries that resulted in the 20% loss of her body as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC026917
Case Name	Timothy Zeigler v. FKG Oil Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0376
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Mark Floyd
Respondent Attorney	Julie Pagano

DATE FILED: 9/11/2025

/s/ Kathryn Doerries, Commissioner
Signature

21WC026917

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	☐ Second Injury Fund (§8(e)18)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Timothy Zeigler,

Petitioner,

vs.

NO. 21WC026917

FKG Oil Company,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19b having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, occupational disease, exposure, and statute of limitations, 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 11, 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.

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

SEPTEMBER 11, 2025

o-9/9/25

KAD/sj

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21WC026917
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/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC026917
Case Name	Timothy Zeigler v. FKG Oil Company
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Mark Floyd
Respondent Attorney	Julie Pagano

DATE FILED: 2/11/2025

/s/Bradley Gillespie, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 11, 2025 4.19%

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)

TIMOTHY ZEIGLER

Employee/Petitioner

v.

FKG OIL COMPANY

Employer/Respondent

Case # **21 WC 026917**

Consolidated cases:

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

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **8/25/21**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did 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 52 weeks preceding the injury, Petitioner earned **\$73,903.88**; the average weekly wage was **\$1,304.94**.

On the date of accident, Petitioner was **60** 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 **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$0.00**.

Respondent is entitled to a credit of **\$any and all paid** under Section 8(j) of the Act.

ORDER

Petitioner failed to meet his burden of proving that he sustained an accident to his right hip and right knee arising out of and in the course of his employment with Respondent. Petitioner failed to provide timely notice of his alleged accident, and failed to prove a causal relationship between his right hip and right knee conditions and his employment. All benefits, including but not limited to medical and TTD benefits, and prospective medical care, are denied.

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

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

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

Bradley D. Gillespie

Signature of Arbitrator

February 11, 2025

Petitioner testified that during the period between 1991 and 1997, he was assigned a bucket truck to change lights, work on signs, and replace ballast or sockets in the lights or signs. (Tr. p. 22) He described climbing in and out of a two-and-a half-ton truck, which had two steps to the cab, and then climbing up four feet into the back of the truck to get into the bucket. (Tr. pp. 22-24) Petitioner used a bucket truck on a daily basis to change lights and signs and complete work orders from various stores. Petitioner testified he would get on the bumper of the bucket truck and step on the back of the tailgate and up into the bucket. (Tr. p. 24) He testified that painting the fuel tanks consisted of squatting to paint and check the bands and IDs underneath the lids to replace as needed. Petitioner would also paint curbs and stripes on the pavement which required either kneeling or bending. (Tr. p. 28)

From 1997 to 2000, Petitioner worked in calibrations which consisted of calibrating the gas pumps to make sure they pumped the right amount of fuel. (Tr. pp. 28-30) The position consisted of running nozzles into the proofer tank on top of a pickup truck to measure the gasoline. *Id.* Petitioner testified that he had to climb onto a platform which was about 24 inches off the pavement to pump the gas into the proofer tank that was about six feet off the ground. He would then jump off the back of the truck absorbing the impact with his knees to make adjustments. Petitioner estimated that he performed this task as many as 180 times a day. (Tr. p. 33) Petitioner testified that while performing that job, he “started noticing popping in my knees and that’s when I first started noticing discomfort.” (Tr. p. 30) He experienced right hip and right knee pain while performing the calibration job. (Tr. pp. 32-33) Petitioner acknowledged that he started feeling fatigue in his knees and hips in the later 1990s, and his knees would actually turn red from having all his weight on them. (Tr. p. 33)

From approximately 2000 to present, Petitioner performed HVAC work for Respondent. (Tr. p. 33) That job consists of servicing the HVAC units on the roof, including the condensers for walk-in coolers and freezers, and ice makers for the soda machines. (Tr. p. 34) Petitioner also worked on compressor units. *Id.* He testified that servicing the ice makers was the most strenuous on his knees and hips because the ladder would be leaned against the wall or on the back of the soda machine and he would have to lean over to one side or sometimes he could only have one hand and foot on the ladder. (Tr. pp. 34-37) Petitioner testified that he worked between 60-80 hours weeks for 10-15 years up until 2000, but since that time, he now works an average of 40-48 hours. (Tr. pp. 39-40)

Petitioner testified that he first started feeling the symptoms in his right hip and right knee “[a]t work whenever I’d squat down I could feel popping in my knees and then – and whenever my hips started going out I started losing limberness on the right side.” (Tr. p. 40) He described it becoming progressively harder to perform daily activities such as putting socks on, bending over to cut his toenails, walking and being on his feet for a long time. (*Id.*) He described taking four Aleve a day because his right hip was worn out and he would be “extremely hurting” for two or three days at a time and then the pain would go away. (Tr. p. 41) Petitioner testified that Dr. L’Hommedieu was the first doctor to tell him that his right hip and right knee condition was related to his job. (*Id.*)

On cross-examination, Petitioner testified that he first started see Dr. Sola for in right hip in January of 2017. (Tr. pp. 42-43) He first started seeing Dr. Sola in 2014 for left knee complaints.

(Tr. p. 43) Petitioner admitted that while he was treating for his left knee in 2014, he was likely overcompensating and putting more weight on the right side. *Id.* Petitioner testified that he underwent a left knee replacement with Dr. Sola in 2017. *Id.* Petitioner testified that his right hip pain began “somewhere about the same time” as his left knee pain, as he started losing limberness in his right hip and it was getting tight. (Tr. pp. 43-44) Petitioner testified that he first told his primary care provider, Dr. Corvallis, about his right hip pain in October 2019. *Id.* Eventually, his right hip bothered him to the point of seeking medical care. (Tr. p. 45) Petitioner testified that despite his right hip bothering him to the point of seeking medical treatment and despite having symptoms at work, he “really didn’t think about” his condition being related to his job. (Tr. p. 45) Petitioner admitted discussing right hip surgery with Dr. Corvallis in July 2020, but stated he wanted to wait until the fall or winter when work slowed down. (Tr. p. 46) Petitioner testified that he was seeing Dr. Sola and he was concerned about his atrial fibrillation and wanted to do his surgery over at Barnes. (Tr. p. 47) He explained that this fell through due to COVID. *Id.* Petitioner initially wanted to go forward with his right hip replacement in April 2021, but had to get his irregular heart beat under control. (Tr. pp. 47-48)

Petitioner testified he started noticing numbness in his right knee around 2022. (Tr. p. 48) He acknowledged that he experienced popping and pain in his right knee while performing calibrations if he squatted down and while jumping back up on the platforms. (Tr. pp. 48-49) Petitioner testified that he was having right knee symptoms while performing his job duties in the late 1990s. (Tr. p. 49) Petitioner’s right knee also bothered him to the point of needing to seek medical care, but his left knee was treated first with a total knee replacement. (*Id.*) Petitioner testified that despite his right knee bothering him to the point of seeking medical attention and despite having symptoms at work, he did not really think there was a relation between his condition and his job, and he figured it was arthritis. (*Id.*) He acknowledged that his right knee symptoms were worse while performing his job duties. (Tr. p. 50)

Pre-Accident Treatment (2014 through August 24, 2021)

On May 1, 2014, Petitioner began treating with Dr. James Sola at Illinois Southwest Orthopedics for complaints of left knee pain for the past couple of years. (PX B, 0083) Petitioner described noticing the pain three years prior. X-rays demonstrated near bone-on-bone arthritis, and he was diagnosed with degenerative arthritis of the left knee. An injection was administered. Dr. Sola advised Petitioner to return as needed. Petitioner returned on January 16, 2015, July 1, 2015, January 25, 2016, June 8, 2016, and October 13, 2016, for flare ups of his left knee pain, and injections were administered at each visit. Petitioner was authorized off work for his left knee from January 12, 2015, through January 19, 2015 (*Id.* at 0086).

Petitioner returned to Dr. Sola on January 18, 2017, for left knee pain as well as discomfort in his right leg, including right hip pain, which radiated to his knee and foot. (PX B at 0098) Petitioner described a numbing sensation to his distal right thigh into the ankle and foot. It was noted there was no trauma and Petitioner had been symptomatic over the past month. Dr. Sola diagnosed right leg pain and radiculopathy and left knee degenerative arthritis. Dr. Sola opined Petitioner’s right leg pain was likely radicular, though given his groin discomfort, it could be Petitioner’s right hip. He recommended therapy and a Medrol Dosepak and if there was no improvement in a month, a lumbar MRI could be performed.

A repeat left knee injection was given on July 10, 2017, and on August 3, 2017, Dr. Sola recommended another left knee injection versus surgery. Dr. Sola performed a left total knee arthroplasty on October 30, 2017. The pre- and post-operative diagnosis were degenerative arthritis of the left knee. (PX B at 0104) Dr. Sola released Petitioner back to full duty work relative to the left knee on January 25, 2018. (*Id.* at 0117)

Petitioner saw his primary care physician, Dr. Joseph Corvallis, on October 24, 2019, and reported right hip pain. He was referred back to Dr. Sola. (PX D, 0181)

Petitioner returned to Dr. Sola on December 19, 2019, for right hip pain. (PX B at 0121) Petitioner noted that his right hip had been “bothering him intermittently for [a] few years” and had gotten much worse over the past few months. He described pain in his right groin that radiated to the thigh. There was no trauma and no numbness or tingling. Petitioner had restricted right hip range of motion on examination and X-rays demonstrated near bone-on-bone arthritis of the right hip joint. Dr. Sola diagnosed degenerative arthritis of the right hip. They discussed treatment options of medication, injections, and surgery. A right hip injection was administered, and Petitioner was advised to follow up as needed.

Petitioner returned to Dr. Sola for persistent right hip pain on July 23, 2020. (PX B at 0123) Again, “no injury” was noted and no numbness or tingling were reported. Dr. Sola diagnosed degenerative arthritis of the right hip and discussed injections versus surgery. Petitioner noted his pain limited his activities and his sleep at night, and he wanted definitive management. However, Petitioner wanted to wait on right hip surgery until late fall or early winter when he had less work to do.

Petitioner followed up with Dr. Sola on October 19, 2020, for his right hip. (PX B at 0125) Petitioner reported persistent right hip pain with no injury and no numbness or tingling. Petitioner advised Dr. Sola that he wanted to proceed with right hip surgery. Petitioner testified at that point he was in fact ready to proceed with the right hip replacement. (Tr. p. 46) Dr. Sola noted previous cardiac issues and arrhythmia during his left knee replacement. Because Petitioner’s cardiologist was at Barnes-Jewish Hospital, Dr. Sola felt it may be safer for Petitioner to have right hip surgery done there in case there were arrhythmia issues during the hip procedure. The diagnosis remained right hip osteoarthritis.

On November 24, 2020, Petitioner was evaluated by Elizabeth Parks, PA at BJC Medical Group to transfer his primary care from Dr. Corvallis. (PX C, 0155) It was noted that Petitioner’s right hip was “bone on bone” and he was pending a right hip replacement pending cv/ortho correlation/decision.

Petitioner followed up for his right hip at Illinois Southwest Orthopedics on April 1, 2021, with Dr. Peter Anderson. (PX B at 0129) Dr. Anderson noted right hip pain with rotation and Petitioner’s diagnosis remained unchanged. Dr. Anderson observed that Petitioner needed to lose weight before he could proceed with the right hip replacement as “nothing else really will help him.” Petitioner testified that he intended to go forward with the right hip replacement in April of 2021, but he had to get his irregular heartbeat condition under control first. (Tr. p. 47)

Petitioner followed up with Ms. Parks, PA, at BJC Medical Group on May 27, 2021. (PX C, 0150) He was continuing to work on weight loss so that he could undergo right hip surgery. Petitioner was told he had to lose 20 lbs.

Petitioner returned to Dr. Anderson at Illinois Southwest Orthopedics on August 10, 2021, for his right hip. (PX B, 0131) Petitioner's weight was down to 265 lbs. and he was told he needed to be closer to 245 lbs. to proceed with his right hip replacement. Dr. Anderson noted that Petitioner "needs a hip replacement badly" and they would proceed with the right hip arthroplasty if he got his weight down.

Post-Accident Treatment (August 25, 2021 through Present)

On the alleged date of accident, August 25, 2021, Petitioner was evaluated by Shawna Swinigan, PA at BJC Medical Group. (PX C, 0141) He reported right lower side pain and blood in his urine. He was assessed with hematuria and advised to follow up in a few weeks for re-check. It was also noted that Petitioner "[m]ay need to see ortho for hip pain (he states he was in his attorney's office discussing the hip as may be related to work issues)." (PX C, 0143) Petitioner was advised to call if he needed an orthopedic referral.

Petitioner was evaluated by Dr. Coles L'Hommedieu at Signature Orthopedics on January 18, 2022, for right hip pain that progressed over the past two years. (PX A, 0075) He also reported groin pain and buttock pain with clicking and popping, but denied radiculopathy. Petitioner reported he worked in HVAC for about 35 years and did not recall a specific injury to his right hip. Petitioner reported that he was previously scheduled for right hip surgery, but was told his BMI was too high to proceed and he was also found to have a dysrhythmia. Right hip X-rays demonstrated severe arthritis with the bones touching together without any intervening cartilage, as well as bone spurs and cystic changes which had developed in response to the cartilage wearing out. (PX A, pp. 0020-0021) Dr. L'Hommedieu diagnosed right hip pain and severe right hip osteoarthritis. He opined Petitioner could either live with activity modification or undergo a right total hip arthroplasty. He did not feel a right hip injection would be beneficial. When asked about causation, Dr. L'Hommedieu indicated that Petitioner's right hip condition was likely due to "cumulative trauma" as there was no specific injury that Petitioner could recall. (*Id.* at 0023)

Petitioner was evaluated by Dr. L'Hommedieu's nurse practitioner on March 7, 2022, complaining of several years of right knee pain without injury. He described increased pain particularly with squatting and intermittent popping. (PX A, 0024) Petitioner denied any specific injury. A right knee injection was administered. He returned on August 22, 2022, and received a repeat injection. (*Id.* at 0025)

At the request of Petitioner's attorney, Dr. L'Hommedieu authored a causation report dated January 9, 2023. (PX A, 0069) He opined that Petitioner's job duties contributed to his orthopedic conditions, though also noted in his report "I do not believe that his employment as an HVAC technician specifically led to osteoarthritis of the [right] hip or knee." (*Id.*) He could not attribute a specific percentage of contribution of Petitioner's job compared to his daily life activities but testified it would be a "mild or mild to moderate" contribution. (*Id.* at 0028) Dr. L'Hommedieu

noted that Petitioner had severe arthritis in the right hip, and he had “received maximum treatment and can continue to do so indefinitely,” though if that did not relieve his symptoms, Petitioner could undergo a total hip replacement. For the right knee, he noted Petitioner could continue injections, medications, activity modification, diet, exercise, physical therapy, bracing, and use of a cane indefinitely until his symptoms no longer responded to conservative care; Petitioner may then require a right total knee arthroplasty.

Dr. L’Hommedieu testified that osteoarthritis is a “slow, repetitive wear and tear process.” (PX A, 0009) He explained that it can be a slow repetitive trauma over the years and that heavy labor can be a contributor, as can a genetic disposition, inflammatory disease, trauma, joint malalignment, and weight. (PX A, 0010) He testified that repetitive or cumulative trauma of heavy workloads can accelerate the progress of osteoarthritis, and that Petitioner’s day-to-day activities could have also increased his symptoms. (PX A, pp. 0035, 0044) While Dr. L’Hommedieu had knowledge that Petitioner had previously treated at Southwest Orthopedics, he did not know when exactly Petitioner’s previously scheduled right hip surgery was supposed to take place, and he agreed that reviewing those records might change his opinion on causation of the right hip. (PX A, 0040) He agreed that given Petitioner’s right hip condition at the time of his evaluation, he would expect him to have symptoms with everyday activities such as walking, running, traversing stairs, and standing. (*Id.* at 0041)

Dr. David King IME and Testimony

At Respondent’s request, Petitioner underwent a Section 12 examination for his right hip and right knee by Dr. David King at Motion Orthopedics on March 4, 2022. (RX 3) Petitioner admitted to no specific injury and described his complaints as being due to repetitive use at work. He discussed his left knee replacement in 2017 and stated that after that procedure, he began to notice increasing right hip pain and “sciatica”. Dr. King noted that Petitioner’s records first documented right lower extremity symptoms in Dr. Sola’s January 18, 2017, note, and right hip surgery had been discussed in the July 23, 2020 note. (RX 3 p. 15)

At the time of his IME, Dr. King performed a physical exam and diagnosed Petitioner with right hip bone on bone degenerative joint disease, moderate right knee degenerative joint disease, and status post-left total knee arthroplasty. Dr. King authored a supplemental report dated November 26, 2023, after having been provided with Petitioner’s prior treatment records and a written job description.

Dr. King testified that Petitioner’s work activities did not cause, aggravate, or accelerate his right hip or right knee conditions because Petitioner had a progressive degenerative process. (RX 3, pp. 11-12) He explained that Petitioner had symptoms that developed over time, which is what you would expect with those conditions. Dr. King noted that Petitioner already had a left knee replacement for osteoarthritis, and explained it is common to have that condition on both sides because it is driven by genetics. (PX 3, p. 12) He also noted that Petitioner was already scheduled for right hip surgery, but while waiting, he was told by a friend that this should be covered through workers’ compensation. Petitioner also was found to have an irregular heartbeat which postponed his right hip replacement. Dr. King went on to testify that Petitioner reported having symptoms in his right hip and right knee with everyday activities, and he opined that he

would “absolutely” expect Petitioner to have symptoms with everyday activities given his clinical presentation. *Id.* He testified that “there’s no doubt that someone with preexisting advanced degenerative joint disease of the right hip and right knee would feel pain during their work activities that are physical. That is the natural history of a progressive degenerative condition. That does not equate to the work activity being an aggravating factor of this preexisting advanced degenerative condition.” (PX 3, pp. 16-17) He went on to explain that “it doesn’t matter how hard your job activities are or how difficult your job is; if you don’t have a preexisting arthritic condition, you’re not going to feel pain. So it’s the preexisting condition that is the cause of pain, not the work activities. *Id.*”

Dr. King concluded that the treatment rendered to date was not due to the alleged work accident, as Petitioner was clearly already seeking out treatment before being told by a colleague to “get work comp” for his conditions. As a result, Dr. King did not believe further treatment was required as related to Petitioner’s work activities, and that he was at MMI for his right hip and right knee. (PX 3, p. 18)

CONCLUSIONS OF LAW

In support of the Arbitrator’s Decision relating to issues (C), (D), and (E), whether an accident occurred that arose out of and in the course of Petitioner’s employment with Respondent, what is the appropriate date of accident, and whether Petitioner provided timely notice of his alleged accident, the Arbitrator finds and concludes as follows:

Petitioner bears the burden of proving all elements of his claim by a preponderance of the evidence, including that his injury arose out of and in the course of his employment, and that his current condition of ill-being is causally related to his accident. *Beattie v. Indus. Comm’n*, 276 Ill.App.3d 446, 449 (1995). Petitioner must also provide notice of an alleged accident to his employer “as soon as practicable, but not later than 45 days after the accident.” 820 ILCS 305/6(c). Failure to provide any notice to the employer within 45 days of the accident bars the claim. *Kishwaukee Comm. Hospital v. Indus. Comm’n*, 356 Ill.App.3d 915, 921 (Ill. App. 2nd Dist. 2005). In a repetitive trauma case, the date of accident from which notice must be given is the date when the injury “manifests itself.” *Peoria County Belwood Nursing Home v. Indus. Comm’n*, 115 Ill.2d 524, 531 (1987). The phrase “manifests itself” signifies “the date on which both the fact of the injury and the causal relationship of the injury to the claimant’s employment would have become plainly apparent to a reasonable person.” *Id.*

Petitioner alleges repetitive trauma injury to his right hip and right knee due to his job duties with Respondent dating back to the beginning of his employment in 1983. The main inquiry here is determining the appropriate date of accident/manifestation date when both a) Petitioner’s fact of injury and b) causal relationship to his employment would have become plainly apparent to a reasonable person. Determining the appropriate manifestation date will also consequently determine whether Petitioner provided timely notice of his alleged accident.

Petitioner first reported right hip pain which radiated to the right knee to Dr. Sola at his January 18, 2017, evaluation. At the time, Dr. Sola diagnosed right leg pain with radiculopathy and suspected that given his groin pain, Petitioner’s issues could be coming from the right hip.

Petitioner then reported complaints of right hip pain to his primary care physician, Dr. Corvallis, on October 24, 2019. He was evaluated by Dr. Sola again on December 19, 2019, for right hip pain that had been bothering him intermittently for a few years and worsened over the past few months. Dr. Sola diagnosed degenerative arthritis of the right hip and discussed treatment options of medications, injections, or surgery; a right hip injection was given at that visit. At his July 23, 2019, follow-up with Dr. Sola, Petitioner advised that he wanted definitive management in the form of right hip surgery but wanted to wait until later in the year when work slowed down. As of his October 19, 2020, evaluation with Dr. Sola, Petitioner confirmed that he was ready to proceed with the right total hip replacement. However, Petitioner first needed to get his weight down and also had to get his irregular heartbeat under control before he could proceed; that resulted in delays of having the right total hip replacement performed.

Based on Petitioner's medical history, the Arbitrator finds that the appropriate manifestation date here, at the latest, was December 19, 2019, as Petitioner was diagnosed with degenerative arthritis of the right hip by Dr. Sola and began actively treating for the right hip at that time. As evidenced by Petitioner's active medical care including a diagnosis of degenerative arthritis of the right hip on December 19, 2019, a right hip injection on December 19, 2019, a discussion of "definitive management" via right hip surgery on July 23, 2019, and the decision to in fact pursue a right total hip replacement as of October 19, 2020, the "fact of injury" was clearly apparent at that time.

Moreover, based on Petitioner's testimony and the medical records, the Arbitrator finds that the causal relationship between Petitioner's condition and his employment would have become plainly apparent to a reasonable person by late 2019. Petitioner provided extensive testimony about how he experienced symptoms and issues in his right hip and right knee while performing his job duties over the years. Per his testimony, those symptoms dated all the way back to his general laborer job which he worked from 1986 to 1990 when he described feeling "discomfort" in his right hip and right knee while using a ladder. (Tr. p. 21) Petitioner further testified that he started noticing more discomfort and pain in his right hip and right knee while performing the calibration job from 1997 to 2000. (Tr. pp. 30-33) He acknowledged that he started feeling right hip and right knee symptoms at work whenever he would squat down and feel popping in his knees and losing limberness in his right side. (Tr. p. 40) Petitioner later testified that his right hip pain began around the same time that his left knee pain began, which was in 2014. (Tr. pp. 43-44) Similarly, he testified that he began noticing right knee symptoms while performing his job duties in the late 1990s. (T49) While Petitioner denied having made a connection between his job and his right hip and right knee symptoms until he was told so by Dr. L'Hommedieu in January of 2022, that is not the legal standard. The Arbitrator finds that under the "reasonable person" standard set forth in the law, a reasonable person would have "connected the dots" that if one is regularly and consistently experiencing right hip and right knee symptoms in the performance of one's job duties over the span of several decades, recognizing those symptoms, and deciding to seek medical care for those symptoms, then the causal relationship of Petitioner's alleged injury to his employment would have become plainly apparent to a reasonable person at that same time.

Having found the appropriate manifestation date to be December 19, 2019, the Arbitrator must therefore conclude that Petitioner failed to provide timely notice of his alleged accident within the mandated 45 days. Petitioner testified that the first notice of his alleged injury that he

provided to his employer was when he filed the Application for Adjustment of Claim. Per the IWCC records, the Application was filed on September 27, 2021. Because notice is a jurisdictional requirement, Petitioner's failure to provide timely notice of his alleged accident therefore bars his claim, and all benefits are denied.

In support of the Arbitrator's Decision relating to issues (F), whether Petitioner's current condition of ill-being is causally related to the alleged accident, the Arbitrator finds and concludes as follows:

Even assuming *arguendo* that Petitioner can establish that he sustained an accident and provided timely notice to his employer, he nevertheless fails to prove that his current condition of ill-being in his right hip and right knee are causally related to his employment. It has long been recognized that, in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition. *Caterpillar Tractor Co. v. Indus. Comm'n*, 92 Ill.2d 30, 36–37 (1982); *Caradco Window & Door v. Indus. Comm'n*, 86 Ill.2d 92, 99 (1981); *Azzarelli Construction Co. v. Indus. Comm'n*, 84 Ill.2d 262, 266 (1981); *Fittro v. Indus. Comm'n*, 377 Ill. 532, 537 (1941).

The Arbitrator finds Dr. King's testimony and opinions more persuasive in supporting that Petitioner's right hip and right knee condition are simply the result of the normal degenerative process of his pre-existing conditions. Dr. King testified that Petitioner is merely suffering from a progressive degenerative process whereby symptoms develop over time. He noted that Petitioner already had his left knee replaced due to osteoarthritis, and explained it is common to have that condition on both sides because it is driven by genetics. Dr. King also testified that Petitioner reported having symptoms in his right hip and right knee with everyday activities, and he opined that he would "absolutely" expect Petitioner to have symptoms with everyday activities given his clinical presentation. Dr. L'Hommedieu agreed that given the stage of Petitioner's degenerative right hip and right knee conditions, he would expect him to have symptoms with his everyday activities such as walking, running, traversing stairs, and standing. Dr. King further explained that "there's no doubt that someone with preexisting advanced degenerative joint disease of the right hip and right knee would feel pain during their work activities that are physical. That is the natural history of a progressive degenerative condition. That does not equate to the work activity being an aggravating factor of this preexisting advanced degenerative condition." (RX3, pp. 16-17) He went on to explain that "it doesn't matter how hard your job activities are or how difficult your job is; if you don't have a preexisting arthritic condition, you're not going to feel pain. So it's the preexisting condition that is the cause of pain, not the work activities. (*Id.*)

Therefore, the Arbitrator finds and concludes that Petitioner's current right hip and right knee conditions are simply the result of the normal degenerative process and are unrelated to his employment with Respondent. Therefore, all benefits are denied.

In support of the Arbitrator's Decision relating to (J), whether the medical services provided to Petitioner's right knee and right hip were reasonable and necessary and whether

Respondent has paid all appropriate charges for medical services, the Arbitrator finds and concludes as follows:

Because Petitioner failed to meet his burden of proof on the issues of accident, notice, and causal connection, all medical benefits are denied.

In support of the Arbitrator's Decision relating to (K), whether Petitioner entitled to any prospective medical care for the right knee and right hip, the Arbitrator finds and concludes as follows:

Because Petitioner failed to meet his burden of proof on the issues of accident, notice, and causal connection, all prospective medical care is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC023766
Case Name	Michael Mazrim v. Springfield Police Department
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0377
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Benjamin Sgro
Respondent Attorney	Kenneth Bima

DATE FILED: 9/12/2025

/s/ Carolyn Doherty, Commissioner

Signature

2023. Dr. Hoeft noted that Petitioner extended his back while vacuuming on August 15, 2023, which Petitioner maintains is both an inaccurate note and adds that he was interviewed shortly after being given morphine. Although a person may not always provide a singular account of their injury on initial treatment, and symptoms may develop later, Petitioner's testimony is that he felt this pain since the alleged accident, and that it was pain different in quality from the prior occasions when he had tweaked his back at work. Petitioner's wife testified that he told her of the work accident. Both Petitioner and his wife testified that the pain was such that it rendered him unable to drive his vehicle on the evening of August 13, 2023, through the afternoon of August 15, 2023. Nevertheless, Petitioner failed to mention this significant pain to his treating physicians and, more notably, actually reported vacuuming his vehicle upon his return from St. Louis to Dr. Hoeft on August 16, 2023. Similarly, Petitioner's spouse described being told of an injury and observing Petitioner suffering significant pain which would be expected to be reported by Petitioner to his treating physicians at some point proximate to the claimed accident.

Petitioner correctly observes that his August 31, 2023, intake form for Dr. Stephens refers to back problems described as occupational, but the specific question of whether this was a work-related injury was answered "Unknown," and Dr. Stephens noted Petitioner's report of back pain for many years. Dr. Stephens testified that he typically asks patients what triggered their pain, including falls or jarring activity, but there is no reference to the alleged work accident in the August 31, 2023, note. The first suggestion that the injury was work-related appears to be a reference to workers' compensation in Dr. Stephens' post-surgical follow-up note on September 21, 2023. Dr. Stephens testified that he did not know specifically what happened in this case and that the history of Petitioner's alleged work accident is not contained in any of the medical records that he reviewed. Petitioner's multiple failures to report the work incident to his treaters left a question in Dr. Stephens' mind as to whether Petitioner actually had the accident. The Commission not only agrees with Dr. Stephens on this point, but also concludes that based on the lack of support for Petitioner's claim in the treatment records, and the inconsistencies between the testimony from Petitioner and his spouse and the treatment records, Petitioner failed to carry his burden of proving a compensable accident in this case by a preponderance of the evidence.

2. If the Commission finds one or all of the witnesses not to be credible, please provide the reasoning therefor.

The Commission has weighed the evidence in this case largely based on the case law and reasoning set forth in the Decision of the Arbitrator. The rules of evidence regarding the admissibility of medical records are informed by the principle that a patient has the incentive to accurately report the circumstances of their condition to their treaters for proper treatment. The Commission also places great weight on Petitioner's testimony that based on his almost 20 years of police work, he understood the importance of giving very accurate and detailed information to individuals taking reports. Tr. 58-59. The Commission has further considered that the testimony from Petitioner and his spouse describes the quick onset of significant pain which rendered him unable to drive his vehicle, which is a situation which a patient, would ordinarily be expected to report to his treaters. Instead, when Petitioner was asked in an intake form whether the injury was work-related, he answered that it was unknown, and volunteered information about vacuuming his vehicle on August 15, 2023, to a treater. Accordingly, in reaching our conclusion, the Commission has placed great weight on the repeated failure of the treatment records to support Petitioner's claim and the inconsistencies between the testimony and the treatment records.

3. *If the Commission finds one or all of the witnesses to be credible, was such credible testimony considered in rendering the Commission's decision on any material issue and in what way?*

The Commission believes this question is effectively answered by the principles and reasoning set forth in the prior two special findings.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 7, 2025, is corrected as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under 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.

SEPTEMBER 12, 2025

O: 09/03/25

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	23WC023766
Case Name	Michael Mazrim v. Springfield Police Department
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Benjamin Sgro
Respondent Attorney	Kenneth Bima

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**

Michael Mazrim

Employee/Petitioner

v.

Springfield Police Department

Employer/Respondent

Case # **23** WC **023766**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **12/20/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **8/13/2023**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$104,175.24**; the average weekly wage was **\$2,003.37**.

On the date of accident, Petitioner was **45** years of age, *married* with **1** dependent child.

ORDER

Petitioner failed to meet his burden on the issues of accident and causal connection. Determination of other disputed issues is moot.

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 FINDS THE FOLLOWING FACTS:

Petitioner's wife, Leigh Mazrim, testified on his behalf. Ms. Mazrim testified that they have been married for 18 years and have one child who is 5 years old. Ms. Mazrim stopped working in January of 2021 to stay home with their adopted daughter, who has special needs.

Petitioner came home from work on August 13, 2023 and said he hurt his back at work. The night prior, his back was fine. Ms. Mazrim testified that Petitioner was in so much pain that she had to drive their family to St. Louis the following day as their daughter was having surgery. She also drove home from St. Louis the next day as Petitioner still had a lot of back pain.

Petitioner's back pain was even worse the next day, on the 15th. In the evening, Petitioner could not get out of bed. The next morning, Ms. Mazrim called 911 as her husband could not move.

Petitioner never told her that the injuries to his low back were the result of anything other than his work duties. She believes that Petitioner's back has improved following surgery and physical therapy. However, she has noticed that Petitioner is unable to sit or stand for long periods. Petitioner also struggles playing with their daughter or doing anything strenuous.

Petitioner testified that he has worked for the Springfield Police Department for 19 ½ years. He currently works as a sergeant in the Criminal Investigations Division, property side. In August of 2023, he worked as a patrol sergeant. As a patrol sergeant, his job was mostly administrative.

As a patrol sergeant, Petitioner was required to wear a vest that weighed 15 pounds with all of the required equipment attached.

On Sunday, August 13, 2023, Petitioner was working the 5:00 a.m. to 5:00 p.m. shift. His duties required him to distribute paperwork in a mailbox of 20-30 open slots that sits on the floor. At around 2:00 p.m. on that day, Petitioner testified that he was bending over to place a document into the second row when he felt a sharp pain down his left buttock. Petitioner was wearing his tactical vest at the time. Prior to this incident, Petitioner testified that his back felt fine.

The incident was not witnessed. No one else was in the sergeant's office at that time. Petitioner did not report the incident that day as he thought his pain would go away.

After his shift ended at 5:00 p.m., Petitioner went straight home and prepared to leave for St. Louis that night. Petitioner testified that his back was hurting so bad that he was not able to drive. Petitioner sat in the backseat of his minivan that had a captain's seat that is heated and fully reclines.

The next day, on Monday, 8/14, Petitioner stayed at the hospital the entire time of his daughter's stay. At approximately 2:00 p.m., they left the hospital and Petitioner asked his wife to drive home as his low back pain persisted.

Petitioner was not scheduled to work the following day, Tuesday, 8/15. He laid in bed. However, around 3:00 p.m. – 4:00 p.m. he was getting stir crazy so he decided to drive his van to the car wash. He is a member of Club Car Wash and wanted to get full value by going at least once a week. As he was going through the car wash, he noticed that his daughter's seat needed to be vacuumed. Petitioner used the car wash's vacuum to vacuum around his daughter's seat. Petitioner testified that the vacuum hose was not heavy. Petitioner testified that he did not reach or bend while using the vacuum.

Petitioner's low back was still in pain. Petitioner did not hurt his back while vacuuming. Petitioner's low back pain did not change while vacuuming.

That evening, Petitioner's low back pain got progressively worse. After midnight, Petitioner experienced muscle spasms and then the pain reached a point where Petitioner could not move. Petitioner waited until the morning and had his wife call for an ambulance. At that point, Petitioner's pain was an 11 out of 10. Petitioner's low back pain was in the same location as it was when he bent over at work on 8/13.

At 8:43 a.m. on Wednesday, 8/16/2023, EMT-paramedics from the Chatham Fire Department arrived at Petitioner's home and took him by ambulance to the emergency room of St. John's Hospital. Petitioner agreed that the EMTs asked Petitioner what happened and when his low back pain started. The history in the Chatham Fire Protection District records states:

"The PT is unable to move under his own power. **The PT stated his pain started last night.**
The PT has no HX of back pain or kidney stones" (RX2, p. 3).

There is no history of Petitioner injuring himself at work on 8/13/2023. Petitioner testified that he did not tell the EMTs that his pain started "last night." Petitioner testified that is when his pain became progressively worse.

At the emergency room of St. John's Hospital, Petitioner was seen by Dr. Nate Blaustein. The history in Dr. Blaustein's record states:

"45-year-old male presents emergency department with onset of right lumbar back pain which started yesterday. He describes the pain is spasmodic in nature 10 out of 10 in severity, sharp worse with movement no relieving features. Denies any bowel bladder incontinence or focal neurologic deficits. **Denies any trauma or abdominal pain nausea or vomiting.** Pain is not radiating. No history of previous back problems" (RX3, p. 10).

The emergency room record also contains a triage note from nurse Courtney Colwell. The history in her record states:

"PT arrives to the ED via EMS for a c/o R flank/back pain. **Per EMS, this pain started yesterday, and is so severe that the PT is unable to move or get out of bed.** PT denies any HX of kidney stones" (RX3, p. 13).

Petitioner testified that he told Dr. Blaustein that his pain started the evening of August 15 of 2023. Petitioner also testified that he told Dr. Blaustein that his pain was getting worse on that date. He disagrees with Dr. Blaustein's record if it indicated that his pain started "yesterday." Petitioner agrees that Dr. Blaustein asked him what caused his pain. Petitioner agrees that he told Dr. Blaustein that he did not have any trauma. Petitioner testified that he told the EMTs that his pain started the day before because "I felt the day before was referring to the evening before when it was progressing getting to the point that I knew that I couldn't get up, that I couldn't move" (Tr. 33).

While in the emergency room, Petitioner was consulted by neurosurgery resident Dr. Ava Hoeft. The history in Dr. Hoeft's record from 8/16/2023 states:

"45y M with no significant PMH, sudden onset right lumbar back pain and radicular

symptoms.

Patient was extended (sic) his back while vacuuming yesterday. Hours after he started to have onset of right mostly lumbar back pain with new radicular symptoms that extended to the back side of the knee on the right leg” (RX3, p. 20).

Petitioner testified that this is not what he told Dr. Hoeft. Petitioner testified that this doctor came into his room shortly after he was provided a shot of morphine. Petitioner testified that Dr. Hoeft asked him what physical activity he had done in the last couple of days. Petitioner testified that he told Dr. Hoeft that the only physical activity that he had done was vacuuming because he was laying in bed for the last two days (Tr. 53, 34-36). Petitioner testified that he did not tell the doctors about the incident at work on August 13 because he was in so much pain that he did not consider the cause of his pain.

Petitioner testified that based on his almost 20 years of police work, he understands the importance of giving very accurate and detailed information to individuals taking reports. Petitioner agreed that following the incident, his back pain was so bad that his wife had to drive round trip to St. Louis on 8/13/2023 and 8/14/2023. But the following day, on 8/15/2023, Petitioner’s pain improved so much that he took his car to a car wash and vacuumed the seats (Tr. 59).

Petitioner was discharged from the emergency room that day and was referred to neurosurgeon, Dr. Bradley Stephens with an appointment for 8/31/2023.

On Friday, 8/25/2023, James Wangard, sent an email to Chief Kenneth Scarlette and others regarding Petitioner’s medical and work status. Part of that email states:

“Mike previously used a significant amount of sick time. I know Mike is worried about how he is going to cover his time off at work. I am asking if the sick time book could be passed to try to help Mike out. I was advised the process begins with an agreement between the Chief of Police and the Union” (RX6).

Prior to seeing Dr. Stephens, Petitioner underwent x-rays at the Springfield Clinic on 8/28/2023. Petitioner was seen by radiologist, Dr. Ronald Hidalgo. The history in Dr. Hidalgo’s records state:

“Patient states having lower back pain that radiates to his buttocks for 12 days.
Unknown injury to the low back” (RX4, p. 1).

Petitioner testified that when he saw Dr. Stephens on 8/31/2023 his back pain was unbearable. Petitioner testified that he agrees with Dr. Stephens’ record on that date which notes that he has had back pain for many years but recently it was so severe that he could not get out of bed. Petitioner testified that there were other times at work where he tweaked his back. However, Petitioner testified that his pain was different on 8/13/2023.

Petitioner agreed that he completed an in-take form at Dr. Stephens’ office on 8/31/2023. The in-take form asked Petitioner if he had an injury, the date of injury, and to describe the injury and how and where it occurred. Petitioner agreed that he answered “no” as to whether or not he had an injury and he left the other parts blank. Specifically, the in-take form states:

“Did you have an injury? No
Date of injury: _____
Describe the injury and how and where it occurred? _____.” (RX5, p. 1-2)

Later that day, Petitioner saw Dr. Stephens but he does not believe that Dr. Stephens asked him what happened and what caused his pain. Petitioner was in too much pain to remember having a discussion with Dr. Stephens.

The history in Dr. Stephens' record for 8/31/2023 states:

“Chief complaint: yellow room, hospital follow-up for left-sided low back pain, Pain 7/10, **denies injury**, CT completed, x-rays **History of Present Illness:** Michael is a 45-year-old Springfield police officer who presents to the neurosurgery clinic with complaints of severe progressive back pain. He states he has had back pain for many years, but three weeks ago it became so severe he was unable to get out of bed and ended up calling an ambulance to go to the hospital” (RX5, p. 3).

Petitioner testified that Dr. Stephens ordered a STAT MRI and then he was admitted directly to Memorial Medical Center. The MRI revealed a disc herniation at L4-5, disc protrusion at L5-S1, and mild degenerative spondylosis at L3-4 (PX6).

On 9/01/2023, Dr. Stephens performed a bilateral L3-4 and L4-5 microdiscectomy and foraminotomy (PX6).

Petitioner testified that he was discharged from the hospital on 9/05/2023.

On 9/12/2023, Petitioner completed an application for adjustment of claim. In the application, Petitioner alleged an accident date of August 13, 2023. In describing how the accident occurred, Petitioner noted “Working on cruiser and bending over to retrieve mail from drop box” (PX1).

Also, on 9/12/2023, Petitioner completed a “City of Springfield Employee Accident Report.” In that report, Petitioner noted that the accident took place on 8/13/2023 at 2:00 p.m. Petitioner described the nature of his injury as “I was distributing miscellaneous department forms and personnel items in the office mailbox, which is located on the floor. I bent over and felt a stinging sensation down my left lower backside. I immediately felt pain and discomfort until standing back up.” When asked what Petitioner was doing just before the accident, Petitioner noted “I was performing my supervisory administrative duties as the “early sergeant”, while in full SPD uniform, to include numerous postural movements such as sitting, standing, squatting, reaching, lifting, bending and walking to perform such duties.” Petitioner felt that the cause of his accident was “weight of the department-issued body armor vest and occupational duty equipment causing excessive strain to low back” (PX8).

Petitioner testified that he waited so long to report the incident to work because he was in so much pain and “It never once occurred to me that any of this could have been caused from that incident, from a singular incident that occurred at work” (Tr. 41-42).

The following day, Lieutenant J. Brands completed a “City of Springfield Supervisor’s Report of Accident.” Lieutenant Brands notes that he was told about this injury when Petitioner submitted the paperwork (RX8, p. 3).

Petitioner testified that Dr. Stephens restricted him from returning to work until 12/01/2023. On that date, Petitioner returned to light duty. Petitioner testified that he was referred to physical therapy in October of 2023 which he performed at the Springfield Clinic. Over the next 10 months, he followed up with Dr. Stephens on six occasions. Petitioner testified that he last saw Dr. Stephens on 7/22/2024. On that date, Petitioner was released back to full duty work and placed at maximum medical improvement.

The history in Dr. Stephens' record for that date states:

“Patient continues to report 100% resolution of pre-op symptoms, denies any lower back pain or radicular pain, denies back spasms, denies numbness and tingling to bilateral feet” (RX9).

Petitioner testified that the surgery and physical therapy alleviated his low back pain. However, Petitioner testified that he still has pain around his mid-back and pain from time to time from standing too long, sitting too long, bending, or twisting. Petitioner testified that all of this started the same time as his low back pain. Petitioner testified that if he performs simple chores like doing laundry, cutting the grass, he will feel it later in the night if he does not take Motrin, Tylenol or ice. Petitioner has to be careful when playing with his daughter. Petitioner believes that the injury drastically changed his life. Petitioner agreed that following the accident, he did not receive any treatment to his mid-back.

At Petitioner's request, the evidence deposition of Dr. Bradley Stephens was secured on 2/01/2024. Dr. Stephens is a board-certified neurosurgeon at the Springfield Clinic. 90% of his practice consists of treating spine pathology. He testified consistent with his medical records.

Dr. Stephens first saw Petitioner on 8/31/2023. Due to Petitioner's severe low back pain, Dr. Stephens admitted Petitioner directly to the hospital and the following day performed a bilateral L3-4 and L4-5 microdiscectomy and foraminotomy. Dr. Stephens testified that the surgery was successful. Petitioner was released to light duty work as of 12/01/2023.

Regarding the issue of causal connection, Dr. Stephens was asked if bending over and placing items into a mailbox on 8/13/2023 could have caused or contributed to the injuries which he treated Petitioner for. Dr. Stephens replied:

“I have no way to say with certainly (sic), but it could have certainly been a provocation of that injury” (PX10, p. 23).

On cross-examination, Dr. Stephens testified that he did not know specifically what happened in this case. He did not know when following this alleged incident Petitioner's pain manifested (PX10, p. 26). Dr. Stephens agreed that the history of Petitioner's alleged work accident is not contained in any of the medical records that he reviewed. Dr. Stephens agreed that one would assume that if a person got hurt at work and had an injury, he would describe that injury to the providers. Dr. Stephens agreed that the lack of corroboration or documentation of the history of accident in the contemporaneous medical records calls into question whether or not Petitioner had a work accident (PX10, p. 33). Dr. Stephens testified that he sees patients all the time with a back injury and the person does not know what caused the back injury. Dr. Stephens agreed that activities of daily living such as a simple sneeze could aggravate or cause a back condition to become symptomatic (PX10, p. 31-32). Dr. Stephens testified that in his intake form, Petitioner denied having an injury and left blank a line which asked Petitioner to describe the injury and how and where it occurred. Dr. Stephens testified that this leaves a question in his mind as to whether or not Petitioner actually had the accident (PX10, p. 44-45).

Dr. Stephens testified that Dr. Ava Hoeft was a second-year neurosurgery resident who saw Petitioner for a consult at the hospital on 8/16/2023. Dr. Stephens was her supervising doctor and saw her documentation for that date. He agreed that her documentation is not consistent with what Petitioner is alleging. However, Dr. Hoeft's documentation is consistent with the EMT records (PX10, p. 35-26). Dr. Stephens was aware that Dr. Hoeft's record notes that Petitioner was vacuuming on 8/15/2023 and then hours later Petitioner had the onset of lumbar radiculopathy. The history in that record and the chain of events would be corroboration that it was

the vacuum activity that led to Petitioner's surgery. Dr. Stephens agreed that Dr. Hoeft's history of Petitioner's back pain starting on 8/15/2023 is consistent with the documentation of the EMT and Dr. Blaustein (PX10, p. 48-49).

In closing, Dr. Stephens addressed the causal connection issue as follows:

“Q: So you'd agree, you do not have enough information to say within a reasonable degree of medical certainty what caused it and your treatment; correct?

A: I can't say what caused it in a linear fashion, no” (PX10, p. 51).

CONCLUSIONS OF LAW:

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

It is well-established that Petitioner has the burden of proving by a preponderance of credible evidence all of the elements of his claim including that the injury arose out of and in the course of employment. Parro v. Industrial Commission, 250 Ill. App. 3d 551, 630 N.E. 2d 860 (1993). The mere existence of testimony does not require its acceptance. Smith v. Industrial Commission, 98 Ill. 2d 20, 455 N.E. 2d 86 (1993). To argue otherwise would require an award to be affirmed whenever Petitioner testified to an injury no matter how much his testimony may be contradicted by the record or how evident it may be that his story is a fabricated after thought. United Steel Corporation v. Industrial Commission, 8 Ill. 2d 407, 134 N.E. 2d 307 (1956).

The Courts have placed a significant weight on contemporaneous treating records and they have even gone so far as to carve out an exception to the hearsay rule by finding that the declaration of an injured person to his treating doctors as to his physical condition and the cause thereof are admitted into evidence for the reasons that it is presumed that a person will not falsify such statements to a doctor for whom he expects and hopes to receive medical aid. Moreover, it is presumed that an injured person will not falsify statements to a treating medical provider. Shell Oil v. Industrial Commission, 2 Ill. 2d 590, 119 N.E. 2d 224 (1954).

Petitioner testified that he injured his back on Sunday, 8/13/2023 when he was bending over to distribute paperwork in a mailbox with open slots that sits on the floor while wearing a tactical vest. The Arbitrator finds it significant that this history does not appear in the first six contemporaneous medical records nor does it appear in the in-take form which Petitioner completed on 8/31/2023.

The initial history from the Chatham Fire Department/EMT paramedics from Wednesday, 8/16/2023 did not contain a history of injury. That record notes that Petitioner's back pain started last night or 8/15/2023.

The ambulance transported Petitioner to the St. John's Hospital where he was seen on 8/16/2023 by Dr. Nate Blaustein. Dr. Blaustein's history notes that Petitioner denied any trauma and that his low back pain started on 8/15/2023.

Petitioner was seen by nurse Courtney Colwell, also at the emergency room. Nurse Colwell notes that she was told by EMS that Petitioner's pain started yesterday, or 8/15/2023.

Also, while at the emergency room on 8/16/2023, neurosurgery resident Dr. Ava Hoeft notes that Petitioner's back pain started yesterday, 8/15/2023 after vacuuming.

Petitioner saw Dr. Hidalgo, a radiologist, on 8/28/2023. His record notes that Petitioner had no known injury to

his low back.

On 8/31/2023, Petitioner completed an in-take form and denied that he had an injury and therefore did not describe how the injury took place.

Dr. Stephens saw Petitioner for a neurosurgical consult on 8/31/2023. Dr. Stephens' record notes that Petitioner denied any injury.

The Arbitrator notes that Petitioner did not report an accident until 9/12/2023 which is the same date that he retained an attorney and completed an application for adjustment of claim.

The Arbitrator also finds it significant that not only do all of the contemporaneous medical records fail to support Petitioner's testimony, but the contemporaneous records also consistently document that Petitioner's low back pain started on Tuesday, 8/15/2023. 8/15/2023 is the date that Dr. Hoeft noted that Petitioner's low back pain started after vacuuming his personal vehicle.

Based on the above, the Arbitrator finds that Petitioner failed to meet his burden on the issues of accident and causal connection. Determination of other disputed issues is moot.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC017990
Case Name	Glenn Jenkins v. Champaign Unit 4 School District
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0378
Number of Pages of Decision	21
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Russell Haugen
Respondent Attorney	John Sturmanis

DATE FILED: 9/12/2025

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)

) SS.

COUNTY OF CHAMPAIGN)

☒ 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

GLENN JENKINS,

Petitioner,

vs.

NO: 14 WC 17990

CHAMPAIGN UNIT 4 SCHOOL DISTRICT,

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, benefit rates, wage calculations, 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 February 14, 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.

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.

SEPTEMBER 12, 2025

O: 09/09/25

AHS/

051

/s/ Amylee H. Simonovich

Amylee H. Simonovich

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Kathryn A. Doerries

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	14WC017990
Case Name	Glenn Jenkins v. Champaign Unit 4 School District
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	19
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Russell Haugen
Respondent Attorney	John Sturmanis

DATE FILED: 2/14/2025

/s/ Linda Cantrell, Arbitrator

Signature

INTEREST RATE WEEK OF FEBRUARY 11 2025 4.19%

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**

GLENN JENKINS

Employee/Petitioner

v.

CHAMPAIGN UNIT 4 SCHOOL DIST.

Employer/Respondent

Case # **14** WC **017990**

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 **Urbana**, on **12/11/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **4/4/2014**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$Issue moot**; the average weekly wage was **\$Issue moot**.

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

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

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

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

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

ORDER

Based on the Arbitrator's findings that Petitioner's current condition of ill-being is not causally connected to the work injury, Respondent is not liable for payment of medical bills, temporary total disability benefits, or permanent partial 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.



FEBRUARY 14 2025

Arbitrator Linda J. Cantrell

GLENN JENKINS,)
)
Employee/Petitioner,)
)
v.) Case No.: 14-WC-017990
)
CHAMPAIGN UNIT 4 SCHOOL DIST.,)
)
Employer/Respondent.)

This claim came before Arbitrator Linda J. Cantrell for hearing in Urbana on December 11, 2024 on all issues. On 5/23/14, Petitioner filed an Application for Adjustment of Claim alleging injuries to his left knee and body as a result of a work injury on 4/3/14. (RX2) On 8/8/19, Petitioner filed an Amended Application for Adjustment of Claim to amend the date of accident to 4/4/14. (AX2)

Petitioner was 59 years old, married, with no dependent children at the time of the alleged accident. He was employed as a school bus monitor for Respondent for approximately six years prior to 4/4/14. Petitioner's job duties included making sure the children got on and off the bus safely and he walked up and down the bus aisle to monitor the children. He was working full duty without restrictions leading up to 4/4/14 and he was able to perform his full job duties without difficulty. Petitioner testified that prior to 4/4/14 he had left knee pain that would come and go, but he was never recommended for knee surgery.

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Petitioner testified that he iced his knee over the weekend, and it became swollen. He treated at Carle emergency department on 4/7/14. Petitioner followed up with his primary care physician Dr. Anukwu on 4/15/14 and was placed him on restrictions of seated work only. Petitioner testified that he provided Respondent with the work slip and his restrictions were not accommodated. Petitioner treated at Carle Orthopedic Group on 4/28/14 and was placed off work pending an MRI. Petitioner testified that Respondent did not approve a recommended surgery, so Dr. Anukwu referred him to the VA clinic for further treatment. The VA clinic referred Petitioner to Dr. Dangles whom he saw on 11/20/15. Petitioner underwent a left total knee arthroplasty on 11/28/15, followed by physical therapy at Carle. Dr. Dangles released Petitioner to full duty work on 5/11/16. Petitioner returned to Dr. Dangles on 7/8/16 and underwent a left knee injection. He denied sustaining any new injuries to his left knee since 4/4/14.

Petitioner continues to have daily swelling in his knee and pain with weather changes. He walks with a cane and his knee occasionally gives out. Petitioner testified that his pain increases with prolonged standing, and he cannot perform activities like he did prior to his injury. He continues to perform home exercises.

On cross-examination, Petitioner testified that prior to his work accident he underwent a right total knee replacement. He did not recall his doctors ever telling him he had arthritis in both knees. Petitioner testified that he probably told his attorney an incorrect date of accident when the initial Application for Adjustment of Claim was filed. He does not believe he told Respondent that his accident occurred on 4/3/14.

Petitioner testified that he was using a cane prior to 4/4/14. He reported his accident to the "head boss" at the time. Petitioner testified that he did not fall down at the time of his accident. He could not recall what history he provided to Carle on 4/28/14. Petitioner did not believe he reported a date of accident of 4/3/14 when he presented to Bayfield Family Clinic. He testified that he took Hydrocodone on 4/28/14 that was prescribed for his right knee. After Petitioner's work accident on 4/4/14, he underwent an unrelated cervical spine fusion, left hip replacement, carpal tunnel surgery, and a shoulder surgery.

Petitioner testified that he did not know the organizational structure at the bus barn. He resigned from employment with Respondent on 4/13/15. Petitioner testified that after he resigned, he did not provide Respondent with any additional work slips. His medical expenses were paid by the VA.

Dan Casillas testified on behalf of Respondent. Mr. Casillas has been the Director of Human Resources for Respondent for the last eight years. He recently assumed the position of Executive Director of Facilities and Operations and continues to oversee some human resource issues. His job duties include overseeing the transportation department and he is familiar with the jobs and organizational structure at Champaign Unit 4. Mr. Castillas testified that a director oversees the transportation department, and they have assistant directors, a supervisor, dispatch, secretaries that handle routing, mechanics, bus drivers, and bus monitors. He testified that bus drivers and bus monitors are co-workers, and the drivers have no supervisory role over the monitors. Mr. Castillas is responsible for training and reviewing employee handbooks. He testified that it is very clear in terms of hierarchy that bus drivers and monitors work together as

a team. Mr. Castillas testified that there is video surveillance on the buses that record over every ten days, so it is important to retrieve video footage in a timely manner.

On cross-examination, Mr. Casillas testified that he was not employed by Respondent in April 2014. He testified that Robin McLean was the Director and John Steinkamp was the Assistant Director of the bus barn in 2014. Mr. Casillas testified that the Assistant Director would investigate an alleged work incident and would likely discuss the incident with the bus driver if the incident occurred on a bus. He testified that Mr. Steinkamp resigned from employment with Respondent around August 2021.

MEDICAL HISTORY/DOCUMENTARY EVIDENCE

On 1/23/14, Petitioner was seen by his primary care physician Dr. Linus Anukwu. Petitioner denied any acute on-going medical problems. The assessment was unspecified essential hypertension, benign neoplasm prostate, and unspecified backache. There were no complaints attributable to Petitioner's left knee at that visit. (PX4, p. 386-388)

On 1/28/14, Petitioner was evaluated by Dr. Anukwu for acute sinusitis and pain in joint pelvis/thigh. He was negative for swelling, tenderness, and stiffness in his knees, and he was noted to ambulate with a normal gait. (PX4, p. 383-385) On 2/24/14, Dr. Anukwu noted Petitioner continued to have back pain. Examination of his spine was normal without tenderness. (PX4, p. 380-382)

On 4/7/14, Petitioner presented to Carle Emergency Department and reported he injured his left knee "a few days ago" while working as a bus driver supervisor. He reported that the bus driver had to step on the brake forcefully and he jolted forward and sprained his knee. Petitioner had been using a cane to help with ambulation. His past medical history included hypertension, benign prostatic hyperplasia, small intestine surgery, and a right total knee replacement. Petitioner underwent a drug screening analysis "following a work accident". Physical examination revealed tenderness to palpation of the medial joint line of the left knee with mild swelling present. X-rays of Petitioner's left knee were negative for fracture or dislocation, with degenerative changes and osteophytes. Petitioner was diagnosed with osteophyte of the knee and knee pain. He was provided with an ACE wrap and instructed to continue using a cane and RICE. He was advised that he would be contacted by orthopedics. Petitioner was released to work without restrictions effective 4/9/14. (PX2, p. 1-11)

An Employee Accident Report was completed and date-stamped 4/15/14. (RX3) The report was not signed or dated by Petitioner, and he did not testify that he completed an accident report. The date of injury was noted as 4/3/14 at 8:00 a.m. It was reported that Petitioner was walking the bus when the bus suddenly stopped, and he hit his left knee of the frame of a seat. The nature of his injury was noted as "left knee sprang".

Carolyn Brumfield completed a Statement of Witness. (PX9) She reported "I heard when he hit his knee". She stated that Petitioner told him he hit his knee on a seat, and he complained of pain. Ms. Brumfield reported that Petitioner was getting into a seat when the accident occurred. She noted a date of accident of "4-10-14" and signed the report on "4-14-10".

On 4/14/14, a Supervisor's Injury Report was completed by John Steinkamp. (RX3) Mr. Steinkamp noted Petitioner hit his left knee on the frame of a seat when the bus suddenly stopped on 4/3/14 at 8:00 a.m.

On 4/15/14, Petitioner returned to Dr. Anukwu and reported left knee pain as a result of a fall at his job. It was noted that Petitioner's employer required a work note to keep him off work. Petitioner reported pain with standing. Dr. Anukwu placed Petitioner on restrictions of seated work only and instructed him to return in one month. (PX4, p. 376-378)

On 4/28/14, Petitioner was evaluated by Danny McFarling, PA at the Carle Department of Orthopedics. It was noted that Petitioner was a school bus monitor and injured his left knee on 4/3/14 when the driver of the bus applied its brakes. Petitioner was unsure if he twisted his knee or if he struck the knee, but he had medial knee joint pain since the incident. He was taking Hydrocodone 10 mg. He denied any prior injuries to his left knee. X-rays revealed a large osteophyte at the patellar tendon and small osteophytic changes of the patella. The impression was left knee pain secondary to injury. An MRI was recommended and Hydrocodone was prescribed. Petitioner was not working, and he was placed off work as standing increased his pain. (PX2, p. 14-15)

On 5/14/14, Dr. Anukwu noted Petitioner continued to have chronic knee and back pain. (PX4, p. 373-375) Petitioner was prescribed Vicodin. Dr. Anukwu stated he would continue pain control and possibly a left knee MRI.

On 5/15/14, Petitioner returned to Dr. Anukwu and requested to be referred for a left knee MRI. He reported that physical therapy did not improve his symptoms. Dr. Anukwu refilled Petitioner's medications and released him to return to work. (PX4, p. 370-372, RX7) An Employer's Notice of Termination of Disability was completed that noted Petitioner returned to full duty work without restrictions on 5/19/14. (RX7)

On 7/31/14, Petitioner was evaluated by Dr. Bavishi at the VA clinic. Petitioner reported he injured his left knee about three months ago while supervising children on a school bus. He hit his knee somewhere and had some pain. He did not undergo the recommended MRI. Physical examination revealed tenderness over the medial collateral ligament and posteromedially over the medial hamstring, with full range of motion and no instability. X-rays revealed calcification in the patellar tendon near the tibial tuberosity and near the inferior pole of the patella, with an exostosis in the proximal fibula. Dr. Bavishi's impression was a contusion sprain of the medial collateral ligament of the left knee. Petitioner was referred to the physical therapist for home exercises and orthotics for a left knee brace with straps. He was ordered to continue Meloxicam, Vicodin, and an ointment. Petitioner was instructed to return as needed. (PX7, p. 465-466)

On 8/18/14, Petitioner received a left knee injection by Dr. Kalec at the VA clinic. (PX7, p. 462-463) On 9/2/14, Petitioner underwent a physical therapy evaluation at the VA clinic. He reported left knee pain that began last spring when he jammed his knee on a bus while working as a bus monitor. Petitioner was referred to physical therapy for a home exercise program. (PX7, p. 460-461)

On 11/10/14, Petitioner presented to the VA clinic for cold symptoms and reported left knee pain. Petitioner was referred for an orthopedic evaluation. (PX7, p. 454-455)

On 12/31/14, Petitioner requested a leave of absence from his work duties through the end of the spring semester 2015 due to a back surgery he underwent on 11/17/14. (RX7) On 1/13/15, Respondent approved an unpaid leave of absence from 1/5/15 through 6/8/15. (RX7)

On 1/27/15, Petitioner was examined by Dr. Richard Lehman pursuant to Section 12 of the Act. (RX1) Petitioner provided a history of injuring his left knee at work on 4/3/14. Dr. Lehman noted that Petitioner was vague in the mechanism of injury and indicated he “broke it in some kind of way and then had pain on the inside aspect of his leg”. He complained of medial joint line pain that increased with activity. Petitioner walked with a cane and had undergone a cervical fusion on 11/17/14. Physical examination revealed significant tenderness along the medial joint line, no varus or valgus instability, mild grinding in the anterior aspect of his knee, mild-to-moderate grinding in the patellofemoral articulation, no swelling, and an element of varus alignment. Dr. Lehman reviewed x-rays dated 4/7/14 that revealed significant degenerative arthritis in the patellofemoral joint and medial joint space, with very poor joint space maintenance. He noted extensive insertional enthesophytes or bone spurs related to the superior and inferior aspect of the patella and tibial tubercle, with a small loose body adjacent to the tibial spine, and possible effusion. He did not observe any acute bony abnormalities.

Dr. Lehman reviewed Petitioner’s medical records dating back to December 2011. He noted that on 2/22/12 Petitioner complained of back and knee pain and was diagnosed with hemarthrosis of the left lower leg, unspecified polyarthritis, and arthropathy lower leg. Dr. Lehman reviewed surveillance video dated 4/3/14 and noted no trauma or any event that would suggest a pathological process in Petitioner’s knee. He reviewed medical records of Dr. Ferguson dated 4/7/14, Dr. Anukwu, and Danny McFarland PA-C. Dr. Lehman opined that Petitioner did not sustain an accident on 4/3/14. He did not believe that Petitioner’s pre-existing end-stage degenerative arthritis was aggravated or changed in any way as there did not appear to be an acute process or trauma on 4/3/14. He opined that Petitioner had significant bilateral degenerative arthritis.

On 3/30/15, Petitioner returned to the VA clinic and reported Hydrocodone was not alleviating his pain. He reported that he was advised he probably should not undergo additional left knee injections. His pain kept him awake at night and he wore a knee brace. Petitioner was assessed with osteoarthritis, probably in need of a knee replacement. Petitioner’s prescription for Vicodin was increased to four times daily for five days, and he was instructed to follow up with his primary care for pain management. (PX7, p. 444-445)

On 4/22/15, Petitioner was re-evaluated by Dr. Bavishi at the VA clinic. Dr. Bavishi noted that Petitioner’s history was somewhat confusing, and Petitioner was not able to relate very well. Dr. Bavishi noted Petitioner had some injury about a year ago on the job. He had an injection that helped for approximately one month. He went to a doctor in Missouri and was told he needed a knee replacement. Petitioner had constant knee pain that interrupted his sleep. His knee swelled and gave way. X-rays were performed and Dr. Bavishi’s impression was possible chondromalacia, medial femoral condyle, and possible degenerative tear of the medial meniscus

of the left knee. Petitioner received another injection and was referred to physical therapy for a home exercise program, and orthopedics for a knee brace. He was instructed to continue Meloxicam and Hydrocodone and return in two months. (PX7, p. 441-442) Dr. Bavishi opined that Petitioner had recovered sufficiently to return to regular work duties on 5/11/15. (RX7)

On 6/16/15, Dr. Bavishi noted Petitioner had severe pain on the medial side of his left knee. He used a cane and could not bear much weight. Physical examination revealed slight swelling with severe tenderness over the medial joint and medial femoral condyle. Range of motion was very painful beyond 90 degrees. Dr. Bavishi recommended an MRI, prescribed Hydrocodone, and referred Petitioner to orthopedics for a knee immobilizer. (PX7, p. 430)

On 7/10/15, Petitioner underwent a left knee MRI that suggested a grade 3 tear of the medial meniscus, sprain versus partial thickness tear of the medial collateral ligament, and joint effusion. (PX7, p. 26) On 8/5/15, Dr. Bavishi recommended arthroscopy exploration with possible partial medial meniscectomy. (PX7, p. 422) On 9/10/15 and 10/23/15, the VA clinic noted Petitioner was scheduled for knee surgery at the clinic, but the procedure was postponed due to Petitioner undergoing a cervical spine fusion. It was noted that Petitioner was referred to an outside orthopedic surgeon.

On 11/20/15, Petitioner was evaluated by Dr. Chris Dangles. Petitioner reported that he previously underwent an arthroscopic surgery on this right knee and recently had a cervical fusion. Dr. Dangles noted obvious tense effusion of the left knee which he drained and injected Depo-Medrol that improved Petitioner's range of motion. Dr. Dangles noted Petitioner was not taking arthritic medication and he prescribed Naproxen. Dr. Dangles noted radiographs showed joint space narrowing medially on the right knee where he had a partial meniscectomy, but no advanced arthritic changes on the left. Examination was limited due to Petitioner's cervical fusion. He was instructed to return in two weeks for further examination for a meniscal tear. There was no discussion of Petitioner's work accident. (PX6, p. 1)

On 12/4/15, Petitioner returned to Dr. Dangles who noted the VA clinic referred him for a left knee replacement procedure, but this was an attempt at conservative care because the radiographs only showed moderate arthritis. Dr. Dangles noted Petitioner still had about 3 mm of joint space left in the medial compartment. He noted that Petitioner's condition was predominantly medial compartment disease, and he was not a good candidate for a partial knee replacement based on his weight being 228 and his range of motion not being stellar. Dr. Dangles recommended a left knee replacement. There was no mention of the work injury. (PX6, p. 2)

On 12/28/15, Petitioner underwent a left total knee arthroplasty by Dr. Dangles. Diagnosis was arthritis of the left knee with varus deformity secondary to avascular necrosis of the medial femoral condyle. (PX6, p. 3-4) He was discharged from the hospital on 1/6/16. (PX6, p. 5). On 1/6/16, Petitioner was evaluated for physical therapy at Carle. (PX2, p. 18-20) He was recommended for therapy twice a week for 8 to 12 weeks. He underwent therapy through 6/21/16.

On 1/27/16, Petitioner followed up with Dr. Dangles and was pleased with the short-term results following surgery. He was ordered to continue with physical therapy. (PX6, p. 6)

On 3/11/16, Dr. Dangles opined that the operative findings of avascular necrosis of the medial femoral condyle were consistent with Petitioner's "history of trauma". A review of pre-operative x-rays revealed that Petitioner's right knee was worse than his left in terms of arthritic changes, which supported his opinion that the trauma contributed to Petitioner needing a knee replacement. Petitioner was still using a cane and Dr. Dangles opined that he was capable of walking without assistance. Petitioner was recommended to continue therapy and wean off narcotic medication. (PX6, p. 8-9)

On 4/8/16, Petitioner returned to Dr. Dangles and reported he felt a pop in his knee while on the exercise bike at physical therapy and his knee had been swollen and painful since. Dr. Dangles was concerned that Petitioner was taking narcotics prescribed by two sources for his neck, back, and other issues. Weight bearing x-rays were performed on Petitioner's bilateral knees that showed good positioning of the left arthroplasty with possible small joint effusion, narrowing of the medial joint compartment of the right knee, with no evidence of acute osseous abnormality. Dr. Dangles prescribed Meloxicam for pain management and instructed Petitioner to return in three months for a stress film of the right knee to plan for a possible "hemi" for the right knee that was bothering him. (PX6, p. 12-13)

On 5/11/16, Petitioner returned to Dr. Dangles with ongoing left knee pain. Dr. Dangles noted Petitioner was 19 weeks postop left total knee arthroplasty for avascular necrosis of the medial femoral condyle which could very likely be associated with the trauma he sustained on the job. He was walking with a cane which was due to problems with his neck and back. Petitioner had some residual soft tissue swelling and medial discomfort in his left knee that was expected to improve with time. X-rays showed good positioning of the knee replacement. Dr. Dangles ordered Petitioner to return in one year for a routine follow-up exam. (PX6, p. 16-18)

Petitioner attended his last physical therapy session on 6/21/16. At that time, it was noted Petitioner's left knee was improving, with soreness at night due to weather. He was expected to be discharged at the next session with a home exercise program. There was no evidence that Petitioner returned for further treatment.

On 7/8/16, Petitioner returned to Dr. Dangles with constant moderate-to-severe pain in his left knee that increased with stairs and daily activities. Dr. Dangles noted good range of motion with moderate swelling. He suspected patellofemoral inflammation and administered a corticosteroid injection into Petitioner left knee joint. Dr. Dangles noted that right knee stress x-rays showed some collapse of the lateral compartment and if Petitioner was to undergo a right knee surgery it would be a total knee arthroplasty. (PX6, p. 20-22)

On 7/15/16, Petitioner followed up with Dr. Dangles and reported some tenderness in his left knee post-injection, but his right knee was bothersome. Dr. Dangles injected Petitioner's left knee with a corticosteroid for residual synovitis in the suprapatellar pouch. He noted Petitioner now had no fluid and better range of motion. He noted it was the first time he saw Petitioner walk without a cane. Dr. Dangles reviewed Carle's medical records and noted Dr. Bane

performed a partial right meniscectomy in 2005. He suspected Petitioner was a candidate for a right total knee replacement. Petitioner underwent a right knee corticosteroid injection. (PX6, p. 24-26)

On 9/16/16, Petitioner returned to Dr. Dangles with intermittent, moderate left knee pain aggravated by walking, decreased mobility, loss of motion, and swelling. Dr. Dangles noted some soft tissue swelling with no effusion. He suspected gout or pseudogout as Petitioner had swelling in his entire left leg. He ordered bloodwork to determine the source of Petitioner's symptoms. (PX6, p. 27-29)

On 9/28/16, Dr. Dangles opined that Petitioner's ongoing left knee issues was due to the patella not being resurfaced operatively and Petitioner had residual patellofemoral arthritis. He noted that overall Petitioner's left knee was not bothering him, and he had no significant effusion. Dr. Dangles noted that Petitioner had bilateral hip arthritis with sphincter-type impingement that could be treated with a total hip arthroplasty if his symptoms persisted. He noted varus deformity in the right knee which was observed from the start of Petitioner's treatment; however, the left knee was operated on "because that was a work-related injury and he wanted to get good documentation that his findings were consistent with trauma and they were". Dr. Dangles opined that Petitioner had a focal area of avascular necrosis in the medial femoral condyle that could have been evoked by his trauma. Dr. Dangles prescribed Indomethacin for Petitioner's musculoskeletal complaints and deep shoes with soft inserts for his painful feet which he previously recommended. He believed that Petitioner's orthopedic issues were controlled and ordered him to return on an as needed basis. (PX6, p. 30-33)

On 2/22/17, Petitioner returned to Dr. Dangles and reported bilateral knee pain, equal on both sides. His symptoms were constant, moderate-to-severe, aching, throbbing, and aggravated by daily activities. Dr. Dangles assessed medial compartment degenerative arthrosis in the right knee. Petitioner's right knee was aspirated and injected with a corticosteroid. X-rays of Petitioner's hip revealed large lateral osteophytes with impingement and multiple sites of enthesopathy. Dr. Dangles suspected some type of rheumatologic disorder and ordered blood work. He recommended that Petitioner follow up with a rheumatologist. Dr. Dangles ordered x-rays of Petitioner's spine due to the enthesopathy seen around his bilateral hips. The studies confirmed impingement in both hips, diffuse enthesopathy around the pelvis, with large anterior spurring syndesmophytes in the spine. He diagnosed diffuse idiopathic hyperostosis. Dr. Dangles referred Petitioner to Dr. Radden at Christie Clinic.

Petitioner continued to treat with Dr. Dangles from 3/17/17 through 1/17/20. He complained of bilateral knee pain, numbness and weakness in his hands, trigger finger, hip pain with impingement related to hyperostosis, back pain, cervical myelopathy with atrophy, carpal tunnel syndrome, and right tennis elbow. On 9/11/17, Petitioner underwent a right total knee arthroplasty for arthritis. (PX6, p. 54, 61) Petitioner reported that his right knee arthroplasty was more successful than his left which Dr. Dangles suspected was due to the patella not being resurfaced. He noted a shift in the cement on the femoral side and early lucencies at the cement interface on the femur. Dr. Dangles recommended observation.

On 3/14/18, Dr. Dangles noted Petitioner moved his scheduled appointment up by one month to discuss his deposition testimony. (PX6, p. 64) Dr. Dangles noted that Petitioner reminded him that his left knee was bothering him enough that he fell down, which led to his neck surgery. Petitioner also expressed his opinion that his left knee problem accelerated the arthritis in his right knee. Dr. Dangles stated he was not 100% sure about either of Petitioner's opinions, but Dr. Dangles was confident that Petitioner's left knee was very likely related to some trauma he sustained because the operative diagnosis was avascular necrosis of the medial femoral condyle. When Petitioner originally presented for treatment, his right knee was already moderately arthritic, but his left knee was the most bothersome.

Dr. Christopher Dangles testified by way of evidence deposition on 8/22/18. (PX1) Dr. Dangles is a board-certified orthopedic surgeon with a focus on hip and knee replacement surgeries. He testified that he initially diagnosed Petitioner with arthritis of the left knee and a degenerative meniscus tear, and possibly gout. Dr. Dangles testified that Petitioner was initially referred to him by the VA for a knee replacement, but he moved rather cautiously preoperatively. He testified that he eliminated Petitioner's hips as a source of pain and concluded that Petitioner's pain was coming from his left knee. He opined that Petitioner was not a good candidate for a partial knee replacement due to him weighing in excess of 230 pounds.

Intraoperatively, Dr. Dangles noted a large avascular fragment of bone on the medial femoral condyle which he opined was consistent with trauma. He noted that the radiologist apparently did not describe the large osteochondral fragment on the MRI which he saw intraoperatively. He testified that the usual downtime following a knee replacement is 10 to 12 weeks for a person performing bus monitoring. Dr. Dangles testified that when he saw Petitioner on 3/11/16 he met his expectations in terms of recovery, other than his continued use of narcotics which Dr. Dangles instructed him to wean off. He noted that Petitioner had gained some weight and weighed 240 pounds at that visit. He would not allow Petitioner to return to work at that time due to narcotic use. Dr. Dangles opined that Petitioner could not return to work when he was examined on 4/8/16 due to a setback he had in physical therapy.

Dr. Dangles opined that Petitioner's left total knee replacement and post-operative physical therapy was reasonable and necessary to treat his left knee condition. Dr. Dangles reviewed two medical records from Carle and a left knee MRI that were dated prior to his treatment of Petitioner. Dr. Dangles was asked to consider a hypothetical of a person standing on a school bus that forcefully struck his knee on a metal seat frame, followed by immediate pain and swelling and treatment within a few days following the incident, and that prior to the incident he worked full duty without restrictions for several years. Dr. Dangles opined that that type of trauma could have caused Petitioner's osteochondral lesion which was the primary reason he required a knee replacement. He based his opinion on Petitioner's history, preoperative x-rays that showed his right knee looked worse than the left, and his intraoperative findings.

On cross-examination, Dr. Dangles admitted that he did not review the MRI. He testified that he would be surprised if the MRI did not show some finding on the medial femoral condyle, which would present relatively soon after a trauma. He testified that he was surprised by the radiologist's report of no finding of an osteochondral lesion. He agreed that the MRI performed over a year after the incident does not tell when Petitioner injured his knee, but he testified that

the MRI report described trauma. He stated that it was not usual for a lesion to not show on an x-ray. Dr. Dangles testified that he had access to Carle's electronic medical records. He stated he knew Petitioner well enough that he found him credible.

Dr. Dangles was asked to consider video surveillance of Petitioner's actions on the school bus on 4/3/14 that did not evidence a traumatic event. Dr. Dangles testified that based on a description of the surveillance dated 4/3/14 there was nothing to indicate trauma. With regard to a history of trauma, Dr. Dangles testified,

Q: Do you recall what he told you, how his accident happened?

A: No. He was referred to me from the VA for a total knee.

Q: Did he give you an accident history?

A: He did.

Q: What was that?

A: He said it all started when he hurt himself at work, but I don't remember the details.

Q: And so you're basing your causation opinion on Direct on the history provided by Mr. Jenkins, correct?

A: Yeah, I didn't put much credence on his history until the time of surgery when I saw a lesion that very often is associated with trauma.

Dr. Dangles testified that he was not aware Petitioner was using a cane on the day of his accident, but stated his right knee was a bad knee. He testified that throughout the course of his treatment he did not place Petitioner on any restrictions because Petitioner had been unemployed.

On 6/17/19, Dr. Dangles performed a left total hip arthroplasty. (PX6, p. 74) Petitioner reported that his left knee continued to give him problems. X-rays revealed no signs of loosening and good alignment. Dr. Dangles suspected Petitioner's symptoms were coming from the patellofemoral joint and advised he could perform another operation to include a patellar button, which Petitioner declined. Petitioner advised he would continue with Tylenol as the pain was not disabling. Dr. Dangles addressed Petitioner's significant right elbow discomfort and assessed tennis elbow. He referred Petitioner to physical therapy.

Additional medical records of Dr. Anukwu were admitted into evidence dated 9/30/21 through 9/15/23. On 9/30/21, Dr. Anukwu noted Petitioner had chronic diffuse bone pain that was debilitating. He had chronic joint pain in the left hip and bilateral knees, neck pain with radiculopathy in both arms with paresthesia and osteoarthritis. Petitioner had severe pain in all joints and swelling in his knees. He walked with a cane and an unsteady gait. Petitioner continued to take NSAIDs and narcotics.

CONCLUSIONS OF LAW

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

Issue (D): What was the date of accident?

“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 4/4/14 he was standing up on a bus route when the bus driver came to a “freak stop”. He struck the side of his left knee on the side of the rail on the bus. Petitioner testified that he reported his injury to the bus driver, Carolyn, who called dispatch to report the accident. They returned to the bus barn and Petitioner was assisted off the bus by John who oversaw the buses.

Although Petitioner did not testify that he completed a written accident report, an Employee Accident Report was completed and date-stamped 4/15/14. The report was not signed or dated by Petitioner. The date of injury was noted as 4/3/14 at 8:00 a.m. It was reported that Petitioner was walking the bus when the bus suddenly stopped, and he hit his left knee on the frame of a seat. The nature of his injury was noted as “left knee sprang”.

Carolyn Brumfield completed a Statement of Witness. She reported “I heard when he hit his knee”. She stated that Petitioner told him he hit his knee on a seat, and he complained of pain. Ms. Brumfield reported that Petitioner was getting into a seat when the injury occurred. She indicated a date of accident of “4/10/14” and she signed the statement on “4-14-10”.

On 4/14/14, a Supervisor’s Injury Report was completed by John Steinkamp. Mr. Steinkamp noted Petitioner hit his left knee on the frame of a seat when the bus suddenly stopped

on 4/3/14 at 8:00 a.m. Pursuant to Dan Casillas' testimony, John Steinkamp was the Assistant Director of the bus barn in 2014.

On 5/23/14, Petitioner filed an Application for Adjustment of Claim alleging injuries to his left knee and body as a result of a work injury on 4/3/14. (RX2) On 8/8/19, Petitioner filed an Amended Application for Adjustment of Claim to amend the date of accident to 4/4/14. (AX2) Petitioner testified that he probably told his attorney an incorrect date of accident when the initial Application for Adjustment of Claim was filed. He did not believe he told Respondent or his treating physicians that the accident occurred on 4/3/14.

Respondent's Director of Human Resources, Dan Casillas, testified that Respondent's video surveillance system records over every ten days. Video surveillance of Petitioner performing his bus monitoring duties on 4/3/14 was obtained, a summary of which was admitted into evidence. Video footage was not obtained of Petitioner's duties on 4/4/14 as Respondent claims it was not aware that Petitioner alleged a date of injury of 4/4/14 until he amended his Application for Adjustment of Claim on 8/8/19, over five years after the alleged accident. The fact that Respondent obtained surveillance footage dated 4/3/14 implies it received notice of Petitioner's work accident within the ten-day period. Petitioner's supervisor, John Steinkamp, also acknowledged receiving notice of Petitioner's accident less than two weeks after it occurred. Mr. Steinkamp was no longer employed by Respondent at the time of arbitration. Carolyn Brumfield did not testify at arbitration.

Petitioner testified that over the weekend he iced his knee, and it became swollen. On 4/7/14, Petitioner presented to Carle emergency room and reported he injured his left knee "a few days ago" while working as a bus driver supervisor. He reported that the bus driver had to step on the brake forcefully and he jolted forward and sprained his knee. On 4/15/14, Petitioner presented to his primary care physician Dr. Anukwu and reported left knee pain as a result of a fall at his job. On 4/28/14, Petitioner presented to Danny McFarling, PA at the Carle Department of Orthopedics, and reported he injured his left knee on 4/3/14 when the driver of the bus applied its brakes. Petitioner was unsure if he twisted his knee or if he struck his knee, but he had medial knee joint pain since the incident. A left knee MRI was ordered. On 7/31/14, Petitioner was evaluated by Dr. Bavishi at the VA clinic and reported he injured his left knee about three months ago while supervising children on a school bus. He reported that he hit his knee somewhere and had some pain.

The Arbitrator finds that Petitioner's accident occurred within the time and space boundaries of his employment. Although he initially alleged an incorrect date of accident of 4/3/14, his history of injury while performing his work duties as a school bus monitor was unrebutted and supported by his co-worker and supervisor's written statements, as well as multiple treating physicians within days of the incident. The Arbitrator finds that Petitioner's risk of injury was distinctly associated with his employment as he was performing acts he was reasonably expected to perform incident to his assigned duties as a bus monitor.

Based on the record 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 4/4/14.

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. *Gano supra*; *Thrall supra*.

There was overwhelming evidence that Petitioner reported his work accident and Respondent acknowledged receipt of notice within the statutory 45-day period. An Employee Accident Report was date-stamped 4/15/14 that reported Petitioner was walking the bus on 4/3/14 when the bus suddenly stopped, causing him to hit his left knee on the frame of a seat.

Carolyn Brumfield completed a Statement of Witness. She reported that she heard Petitioner hit his knee and Petitioner told her that he struck his knee on a seat. Ms. Brumfield observed Petitioner in pain. She noted a date of accident of "4-10-14" and signed the witness report on "4-14-10".

On 4/14/14, a Supervisor's Injury Report was completed by Petitioner's supervisor John Steinkamp. Mr. Steinkamp noted Petitioner hit his left knee on the frame of a seat when the bus suddenly stopped on 4/3/14 at 8:00 a.m.

On 5/23/14, Petitioner filed an Application for Adjustment of Claim alleging injuries to his left knee and body as a result of a work injury on 4/3/14. Although Petitioner did not amend his Application for Adjustment of Claim to correct the date of accident until 8/8/19, Respondent failed to show it was unduly prejudiced by receiving notice of an inaccurate date of injury by one day. No witnesses testified on behalf of Respondent to refute that it received timely notice of Petitioner's accident. Therefore, the Arbitrator finds that Petitioner provided timely notice of his accident to Respondent.

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

On 1/27/15, Respondent's Section 12 examiner Dr. Lehman noted that radiographs showed Petitioner had end-stage degenerative arthritis and evidence of significant arthritis in his bilateral knees. Dr. Lehman's opinion that Petitioner's degenerative condition was not aggravated or changed in any way was based solely on there being no traumatic event on 4/3/14. He did not provide a causation opinion as to Petitioner's mechanism of injury of striking his knee on a metal seat.

On 4/7/14, x-rays of Petitioner's left knee showed degenerative changes and osteophytes. On 4/28/14, x-rays revealed a large osteophyte at the patellar tendon and small osteophytic changes of the patella. On 7/31/14, x-rays revealed calcification in the patellar tendon near the

tibial tuberosity and near the inferior pole of the patella, with an exostosis in the proximal fibula. Petitioner's left knee treatment was delayed due to a cervical spine fusion performed on 11/17/14. On 4/22/15, x-rays of Petitioner's left knee revealed possible chondromalacia, medial femoral condyle, and possible degenerative tear of the medial meniscus. An MRI was performed on 7/10/15, fifteen months after the work accident, that suggested a grade 3 tear of the medial meniscus, sprain versus partial thickness tear of the medial collateral ligament, and joint effusion.

Petitioner was initially examined by Dr. Dangles on 11/20/15. Dr. Dangles noted radiographs showed joint space narrowing medially in Petitioner's right knee where he had a partial meniscectomy in 2005, but no advanced arthritic changes on the left. Dr. Dangles' office note did not contain any history of injury to Petitioner's left knee. Dr. Dangles stated at the next visit on 12/4/15 that Petitioner was referred by the VA clinic for a left knee replacement, but he recommended conservative care because radiographs only showed moderate arthritis. He opined that Petitioner's condition was predominantly medial compartment disease. There was no mention of the work injury at the second visit.

Dr. Dangles performed a left total knee arthroplasty on 12/28/15. He diagnosed arthritis with varus deformity secondary to avascular necrosis of the medial femoral condyle. For the first time on 3/11/16 Dr. Dangles vaguely referenced an acute injury. He opined that avascular necrosis of the medial femoral condyle was consistent with Petitioner's "history of trauma". Dr. Dangles testified that pre-operative x-rays showed Petitioner's right knee was worse than his left in terms of arthritic changes, which supported his opinion that "the trauma" contributed to Petitioner needing a knee replacement. However, with regard to the mechanism of injury, Dr. Dangles testified:

Q: Do you recall what he told you, how his accident happened?

A: No. He was referred to me from the VA for a total knee.

Q: Did he give you an accident history?

A: He did.

Q: What was that?

A: He said it all started when he hurt himself at work, but I don't remember the details.

Q: And so you're basing your causation opinion on Direct on the history provided by Mr. Jenkins, correct?

A: Yeah, I didn't put much credence on his history until the time of surgery when I saw a lesion that very often is associated with trauma.

Dr. Dangles admitted he did not review the left knee MRI performed on 7/10/15, four months prior to his initial examination. He testified that the intraoperative finding on the medial femoral condyle would have presented relatively soon after a trauma, and he was surprised that the radiologist did not describe the large osteochondral fragment that he saw intraoperatively. He agreed that the MRI performed over a year after the incident does not tell when Petitioner injured his knee. Dr. Dangles based his causation opinion in part on Petitioner's history and preoperative x-rays. The records do not support that Petitioner ever provided Dr. Dangles with a history or mechanism of injury.

Dr. Dangles testified that he initially diagnosed Petitioner with arthritis of the left knee and a degenerative meniscus tear, and possibly gout. He noted during his initial examination on 11/20/15 that radiographs showed medial joint space narrowing in Petitioner's right knee where he had a partial meniscectomy in 2005, and moderate arthritis in the left knee with about 3 mm of joint space left in the medial compartment. He opined that Petitioner's left knee condition was predominantly medial compartment disease. On 9/28/16, Dr. Dangles noted varus deformity in Petitioner's right knee which he observed from the start of Petitioner's treatment; however, he operated on Petitioner's left knee "because that was a work-related injury and he [Petitioner] wanted to get good documentation that his findings were consistent with trauma and they were". Dr. Dangles opined that Petitioner had a focal area of avascular necrosis in the medial femoral condyle that could have been evoked by his "trauma". However, there was no evidence that Dr. Dangles was made aware of Petitioner's mechanism of injury until a hypothetical was posed to him at his deposition on 8/22/18.

Petitioner continued to treat with Dr. Dangles for various complaints, including bilateral knee pain, numbness and weakness in his hands, trigger finger, hip pain with impingement related to hyperostosis, back pain, cervical myelopathy with atrophy, carpal tunnel syndrome, and right tennis elbow. In September 2016, Dr. Dangles again suspected Petitioner had gout or pseudogout as his entire left leg was swollen. On 2/22/17, Dr. Dangles noted Petitioner had bilateral knee pain, equal on both sides. He assessed medial compartment degenerative arthrosis in the right knee and performed a right total knee arthroplasty on 9/11/17. Dr. Dangles diagnosed bilateral hip impingement, with diffuse enthesopathy around the pelvis, with large anterior spurring syndesmophytes in the spine. He suspected Petitioner had a rheumatologic disorder and recommended that Petitioner follow up with a rheumatologist. On 6/17/19, Dr. Dangles performed a left total hip arthroplasty.

The Arbitrator questions Petitioner's credibility based on Dr. Dangles' medical records. On 3/14/18, Dr. Dangles noted Petitioner moved his scheduled appointment up by one month to discuss Dr. Dangles' upcoming deposition testimony. Dr. Dangles noted that Petitioner reminded him that his left knee was bothering him enough that he fell down, which lead to his neck surgery. Petitioner also expressed his opinion that his left knee problem accelerated the arthritis in his right knee. Dr. Dangles stated he was not 100% sure about either of Petitioner's opinions.

Dr. Dangles noted on several occasions he was concerned with Petitioner's narcotic usage. On 3/11/16, Dr. Dangles opined that Petitioner was meeting his expectations in terms of recovery, other than his continued use of narcotics which Dr. Dangles instructed him to wean off. He would not allow Petitioner to return to work at that time due to narcotic use. He also noted

that Petitioner was still using a cane and Dr. Dangles opined that he was capable of walking without assistance. On 4/8/16, Dr. Dangles was concerned that Petitioner was taking narcotics prescribed by two different medical providers for his neck, back, and other issues. On 9/30/21, Petitioner's primary care physician Dr. Anukwu noted Petitioner had chronic diffuse bone pain that was debilitating, severe pain in all joints, chronic joint pain in the left hip and bilateral knees with swelling, neck pain with radiculopathy in both arms with paresthesia, and osteoarthritis. Petitioner continued to take narcotics and walked with a cane due to an unsteady gait.

Based on the entirety of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being is not causally connected to the work accident of 4/4/14.

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

Based on the above findings as to causal connection, 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?

Based on the above findings as to causal connection, the Arbitrator finds Respondent is not liable for payment of medical bills and Petitioner's claim for said benefits is denied.

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

Based on the above findings as to causal connection, the Arbitrator finds Respondent is not liable for payment of temporary total disability benefits and Petitioner's claim for said benefits is denied.

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

Based on the above findings as to causal connection, the Arbitrator finds Respondent is not liable for payment of permanent partial disability benefits and Petitioner's claim for said benefits is denied.



FEBRUARY 14 2025

Arbitrator Linda J. Cantrell

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020612
Case Name	Stephanie Vail v. Decatur Police Department
Consolidated Cases	22WC020614
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0379
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Frank J. Bertuca
Respondent Attorney	Daniel Artman

DATE FILED: 9/12/2025

/s/ Carolyn Doherty, Commissioner

Signature

September 12, 2025

O: 09/03/25

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	22WC020612
Case Name	Stephanie Vail v. Decatur Police Department
Consolidated Cases	22WC020614
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Frank J Bertuca
Respondent Attorney	John Fassola

DATE FILED: 1/3/2025

/s/ Linda Cantrell, Arbitrator

Signature

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

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**

Stephanie Vail

Employee/Petitioner

v.

Decatur Police Department

Employer/Respondent

Case # **22** WC **020612**

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 **11/22/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **1/8/22**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$74,894.04**; the average weekly wage was **\$1,440.27**.

On the date of accident, Petitioner was **34** years of age, *single* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$103,699.44** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$103,699.44**.

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

Pursuant to the stipulation of the parties, Respondent shall pay Petitioner temporary total disability benefits of **\$960.18/week** for **104-1/7** weeks, commencing **1/9/22** through **1/7/24**, under Section 8(b) of the Act. Pursuant to the stipulation of the parties, Respondent shall receive a credit of \$103,699.44 in TTD benefits paid, resulting in an overpayment of TTD benefits in the amount of \$3,706.29 (104.14 x \$960.18 - \$103,699.44).

Respondent shall pay the medical bills contained in Petitioner's Group Exhibit 14 directly to Petitioner, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, with the exception of the following medical bills which are denied herein:

Prescription expenses for Meloxicam in the amount of \$10.00 on 5/5/23 as Petitioner testified that her primary care physician prescribed said medication for arthritis;

Dr. Marshall Brustein for date of service 5/8/24 as no medical record was admitted into evidence to corroborate the medical bill, and the Arbitrator notes that Petitioner treated with Dr. Brustein for a right thumb injury that is unrelated to the 1/8/22 accident;

All medical bills incurred at Echo Bravo Intensives as no medical records were admitted into evidence to corroborate the medical bills for dates of service 5/15/24 through 11/8/24; and

Brook Park Medical Associates as no medical records were admitted into evidence to corroborate the medical bill.

Pursuant to the stipulation of the parties, Respondent shall receive a credit for any and all medical expenses paid through its group medical plan under Section 8(j) of the Act. Respondent shall hold Petitioner harmless from any and all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Respondent shall pay Petitioner permanent partial disability benefits of **\$864.16/week** for **237.5** weeks, because the injuries sustained caused **47.5%** loss of use of her body as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 6/6/23 through 2/26/24, 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.



Arbitrator Linda J. Cantrell

January 3, 2025

STATE OF ILLINOIS)
) SS
 COUNTY OF SANGAMON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

STEPHANIE VAIL,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 22-WC-020612
	)	
DECATUR POLICE DEPARTMENT,	)	Consolidated Case No. 22-WC-20614
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Springfield on November 22, 2024 on all issues. On 8/8/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right thumb while employed by Respondent on 11/1/20. (Case No. 22-WC-020614, AX2A) On 8/8/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to her face and left shoulder while employed by Respondent on 1/8/22. (Case No. 22-WC-020612, AX2B) The cases were consolidated on 4/11/24.

With respect to Case No. 22-WC-020612, the parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 1/8/22. Petitioner claims medical bills in the amount of \$8,535.79. Respondent disputed liability for medical bills and demanded strict proof. The parties stipulated that Respondent is entitled to a credit for any and all medical bills paid through its group medical plan, under Section 8(j) of the Act.

The parties stipulated that Petitioner is entitled to temporary total disability benefits from 1/9/22 through 1/7/24, representing 104-1/7th weeks. The parties stipulated that Respondent is entitled to a credit of \$103,699.44 in TTD benefits paid, resulting in an overpayment of TTD benefits in the amount of \$3,706.29 (104.14 x \$960.18 - \$103,699.44). (AX1B, Ex. 1)

The issues in dispute in Case No. 22-WC-020612 are causal connection, medical bills, and the nature and extent of Petitioner's injuries. Petitioner waived her right to benefits under Section 8(d)1 of the Act and claims entitlement to loss of trade benefits under Section 8(d)2 of the Act. The Arbitrator has simultaneously issued a separate Decision in Case No. 22-WC-020614.

TESTIMONY

Petitioner was 34 years old, single, with no dependent children at the time of the accident. Petitioner was hired by Respondent as a police officer on 9/23/15. Petitioner testified that she injured her right thumb attempting to place a suspect into handcuffs on 11/1/20. She used both hands to pull the suspects hands off of a hospital bed bar when her right thumb bent backwards, and she felt immediate pain. Petitioner is right hand dominant.

Petitioner testified that she had surgery on her right thumb in 2007 to repair an avulsion fracture she sustained playing Rugby in college. She underwent another surgery on her right thumb in 2012 to repair the radial collateral ligament that she injured while firefighting. Petitioner testified that she did not have any pain and was not actively treating for her right thumb prior to the 11/1/20 injury.

Following the 11/1/20 accident, Dr. Brustein performed two right thumb surgeries on 2/25/21 and 4/19/22. Respondent accommodated Petitioner's work restrictions and Dr. Brustein released Petitioner to full duty work. Petitioner testified that she cannot fully straighten or bend her thumb due to the plate and screws implanted during the second surgery. She demonstrated that she cannot touch her right thumb to her palm as she can with her left thumb. Petitioner had a greater mass on her right thumb toward her hand compared to the left. Petitioner experiences arthritic pain with weather changes and decreased grip strength.

Petitioner testified that on 1/8/22 she was operating a patrol car and attempted to initiate a traffic stop of a vehicle that was disobeying traffic laws. Petitioner followed the vehicle until it came to a stop and the driver exited his vehicle and fled on foot. Petitioner pursued the driver on foot and observed the driver on the other side of a chain-link fence. Petitioner observed the driver raise a gun and fire a shot at her. She felt immediate pain in her face and observed bleeding prior to being transported to the hospital.

Petitioner testified that she sustained a bullet fragment in the left side of her forehead and the right upper side of her nose. Petitioner admitted that prior to 1/8/22 she had been receiving treatment with counselor Ms. Teri Ullis who provides mental health services to first responders for Respondent. Ms. Ullis referred Petitioner to another mental health professional Ms. Kim Peters whom Petitioner treated with for depression and post-traumatic stress disorder prior to 1/8/22. Petitioner attended counseling sessions with Ms. Peters from 11/22/21 through 1/3/22; however, Petitioner was able to perform her job duties as a police officer during that period.

Petitioner testified that after the 1/8/22 incident, her mental health providers disabled her from law enforcement duties. Petitioner testified that after 1/8/22 her medication dosages and counseling sessions increased. Petitioner treated with her primary care physician Dr. Roberto Pabalate from 3/2/22 through 8/15/22 for sleep difficulties and medication management. Ms. Ullis referred Petitioner to the Hanley Center in Florida on 12/17/22 where she was voluntarily admitted for alcohol abuse. Petitioner testified that her alcohol abuse increased after the 1/8/22 shooting. She was treated and released and continued her treatment with Dr. Bashir in Illinois.

Petitioner testified that the expenses contained in PX14 were for medications and treatment she received as a result of the 1/8/22 accident. She testified that the balance of \$8,535.79 represents money owed to her as she paid all of her medical bills. Petitioner testified that at times her medical card through the worker's compensation carrier denied payment of her medications and she paid out-of-pocket.

Petitioner testified that the pension board had her examined by various doctors in relation to her duty disability pension claim, including Dr. Killian, Dr. Pan, and Dr. Jeckel. She was examined by Dr. Thomas Campion on 8/8/23 pursuant to Section 12 of the Act. Petitioner testified that she provided all four physicians with a history of her prior mental health treatment and conditions. Petitioner was awarded a duty disability pension from the City of Decatur Police Pension Board effective 1/8/24.

Petitioner is currently employed as a security officer for the Decatur school district. She monitors and escorts students in an unarmed position, including breaking up fights, running bags through a metal detector, and using a wand to perform weapon checks. She earns \$21.57 per hour and works 35 to 40 hours per week. Petitioner is off work during the summer session. Petitioner testified that she is not aware of any advancement opportunities in her current employment, including higher rank or compensation, like she had as a police officer.

Petitioner takes Naltrexone, Xanax, Prazosin, Trintellix, Rexulti, Clonazepam, and Zofran. She feels fatigued and takes medication to assist with sleep. Petitioner wakes at night feeling panicked and sweating profusely. She fights in her sleep and has regular nightmares about being shot in the face. Petitioner testified that if she does not have to get up in the morning for work and has nothing planned, she has no motivation to get out of bed. She is working with her psychiatrist to properly care for her dogs and maintain housework because she has no motivation, and she feels like there is no point in living. Petitioner testified that several times a week she has thoughts of being shot when she is awake. She testified that working around children with social media is difficult because there is a video from her body cam showing her get shot in the face. Petitioner avoids social interaction with friends and family.

Petitioner is currently undergoing counseling with Tara Ullis one hour per week. She treats with nurse practitioner psychiatrist Emily Barker for two hours every other week for a more intense therapy session. She also sees nurse practitioner psychiatrist Crystal Cargill once a month for medication management.

On cross-examination, Petitioner testified that she fractured the tip of her right thumb in September 2020 while playing softball. She stated that the injury on 11/1/20 was to a different part of the thumb and was at the base. Petitioner testified that after her thumb injury on 11/1/20 she went to Occupational Health, and they allowed her to return to work with restrictions. She was released at MMI without restrictions on 11/9/20.

Petitioner testified that after her first surgery with Dr. Brustein she was released to full duty work on 6/30/21. She was working full duty at the time of her accident on 1/8/22. She underwent a second surgery on her right thumb in 2022 and was released to full duty work on 10/28/22. She has not returned to Dr. Brustein since her last visit in May 2023 and she is not

actively treating for her thumb injury. Petitioner is not taking any medications for her thumb condition. She frequently plays softball and has played 10 games in one weekend. Petitioner uses her right hand to throw and grip the bat, and she has played umpire. Petitioner coached basketball for a short time. She testified that her right thumb is not involved when she throws a softball as it is used more for stabilization, and she uses her fingers and wrist to throw. She has some issues gripping a bat, but she mostly grips with her front left hand when swinging. She denied any injuries to her right thumb after 11/1/20.

Petitioner agreed that she began receiving mental health treatment with Ms. Ulis in 2020. At the time of her 1/8/22 accident, Petitioner was treating with Kim Peters once a week. She was prescribed Trazadone and had an inpatient mental health stay in 2009. She was hospitalized in 2020 due to medication issues. Petitioner was diagnosed with PTSD in November 2021. Her FOID card was revoked in September 2021 at which time she took a leave of absence. At that time Petitioner was required to keep her revolver at the police station and she could not take it home. Petitioner testified that her prior mental health issues involved family issues and childhood trauma. She agreed that she was taking prescription medication for mental health conditions prior to 1/8/22. Petitioner agreed that her counselors are treating her for other stressors besides the shooting on 1/8/22 because they are “working on her as a human being”. Her treatment with Ms. Barker is more focused on the shooting because she does intense eye movement desensitization and reprocessing therapy.

Petitioner testified that after the 1/8/22 accident her FOID card was reinstated. She testified that her FOID card was revoked in September 2021 because it was reported that she was hospitalized in November 2009, even though her FOID card was originally issued in 2015. She obtained a psychological evaluation with Dr. Hall to get her FOID card reinstated and had to take a leave of absence for a couple of weeks to straighten things out. She does not have an active FOID card at this time.

Petitioner no longer takes Gabapentin for anxiety or Meloxicam for arthritis. She testified that she did not require the bi-weekly two-hour intense therapy sessions prior to 1/8/22.

MEDICAL HISTORY

Petitioner was transported to Decatur Memorial Hospital immediately following the incident. A facial CT scan revealed metallic material in the left frontal lobe with a 1 x 3 radiopaque foreign body and on the right nasal soft tissue area, with another 2 mm radiopaque foreign body consistent with fragments of shrapnel or bullet material. On 1/14/22, Petitioner returned to Decatur Memorial Hospital with complaints of tenderness at the foreign body sites. She had a small raised and tender left forehead and a raised and inflamed area to the right side of her nose. She was treated with antibiotics and the metallic foreign bodies were removed under local anesthesia.

Petitioner was actively participating in mental health counseling prior to 1/8/22. She treated with counselor Tara Ulis who referred her to Kim Peters for treatment of depression and post-traumatic stress disorder. Petitioner was actively treating with Ms. Peters at the time of the work accident and already carried a diagnosis of PTSD as of November 2021. (PX13, p. 7)

Petitioner was referred to a psychiatrist prior to January 2022 and was actively prescribed medications for unrelated mental health conditions related to childhood trauma, relationship issues, family issues, and other non-work stressors that occurred between 2009 and June 2022 unrelated to the shooting incident. (PX4)

Ms. Peters noted that Petitioner was able to function as a police officer while receiving treatment, but the work shooting accident of 1/8/22 exacerbated her symptoms. Petitioner received eye movement desensitization and reprocessing treatment from Ms. Peters.

From 3/2/22 through 8/15/22, Petitioner treated with her primary care physician, Dr. Roberto Pabalate, in the form of medications for PTSD symptoms and difficulty sleeping. From 8/3/22 through 10/20/22, Petitioner underwent counseling with Shannon Griffith. On 9/7/22, Petitioner began counseling with Emily Barker and continues to treatment with Ms. Barker for PTSD, recurrent major depressive disorder, unspecified eating disorder, insomnia due to mental disorders, and alcohol dependency with an unspecified alcohol induced disorder. (PX4)

From 12/17/22 through 3/2/23, Petitioner underwent inpatient treatment at Hanley Center for alcohol abuse at the referral of Ms. Ullis. The medical records describe an increase in alcohol abuse following multiple mental health traumas, including the shooting of a co-worker in October 2022. (PX9, p. 35) The records further summarize Petitioner's history of mental health traumas including, "my and my mother's relationship nearly ruined my life", the death of a father figure, the death of a police officer, the death of a pet, and the death of her nephew in a car accident. (PX9, p. 159)

Petitioner filed for a duty disability pension through the Decatur Police Officer's Pension Fund. (PX15) The Pension Board had Petitioner examined by Dr. Killian on 6/6/23, Dr. Pan on 6/26/23, and Dr. Jeckel on 6/29/23. (PX17-19) All three of the Pension Board's examining doctors opined that Petitioner's mental health condition was causally connected to the 1/8/22 shooting incident and that she was disabled from law enforcement. Petitioner was awarded a duty disability pension effective 1/8/24.

On 8/8/23, Petitioner was examined by Dr. Thomas Campion pursuant to Section 12 of the Act. (RX1) Dr. Campion diagnosed Petitioner with PTSD and severe major depression with anxiety. He opined that Petitioner was not fit for law enforcement duty due to the 1/8/22 shooting incident and recommended additional therapy, treatment, and medications.

CONCLUSIONS OF LAW

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

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital v. Workers' Comp. Comm'n*, 864 N.E.2d 266, 272-273 (5th Dist. 2007).

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 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); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm'n*, 362 N.E.2d 339 (Ill. 1977).

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*, 797 N.E.2d 665, 672 (2003). [Emphasis added]. "Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury." *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3d Dist. 2000).

Additionally, 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).

There is no dispute that Petitioner was diagnosed with and actively treating for mental health conditions for years leading up to the 1/8/22 shooting incident. Petitioner's testimony is supported by the medical records that her medication dosages and counseling frequency increased following the work accident, including eye movement desensitization and reprocessing therapy.

Petitioner was examined by Dr. Killian on 6/6/23, Dr. Pan on 6/26/23, and Dr. Jeckel on 6/29/23 for a duty disability pension determination. (PX17-19) All three of the Pension Board's examining doctors opined that Petitioner's mental health condition was causally connected to the 1/8/22 shooting incident and that she was disabled from law enforcement. Petitioner was awarded a duty disability pension effective 1/8/24.

On 8/8/23, Respondent's Section 12 examiner Dr. Campion diagnosed Petitioner with PTSD and severe major depression. He opined that Petitioner was not fit for law enforcement duty due to the 1/8/22 shooting incident and recommended additional treatment.

Based on the evidence as a whole, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the work accident of 1/8/22.

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

Based on the Arbitrator's finding as to causal connection, the Arbitrator finds that Petitioner is entitled to medical expenses. Petitioner submitted medical bills into evidence in the amount of \$8,535.79. (PX14) Petitioner testified that she personally paid the medical bills.

Therefore, Respondent shall pay the medical bills contained in Petitioner's Group Exhibit 14 directly to Petitioner, pursuant to the medical fee schedule, as provided in Sections 8(a) and 8.2 of the Act, with the exception of the following medical bills which are denied herein:

Prescription expenses for Meloxicam in the amount of \$10.00 on 5/5/23 as Petitioner testified that her primary care physician prescribed said medication for arthritis;

Dr. Marshall Brustein for date of service 5/8/24 as no medical record was admitted into evidence to corroborate the medical bill and the Arbitrator notes that Petitioner treated with Dr. Brustein for a right thumb injury that is unrelated to the 1/8/22 accident;

All medical bills incurred at Echo Bravo Intensives as no medical records were admitted into evidence to corroborate the medical bills for dates of service 5/15/24 through 11/8/24; and

Brook Park Medical Associates as no medical records were admitted into evidence to corroborate the medical bill.

Pursuant to the stipulation of the parties, Respondent shall receive a credit for any and all medical expenses paid through its group medical plan under Section 8(j) of the Act. Respondent shall hold Petitioner harmless from any and all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

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 was deemed unfit and disabled from law enforcement duties. Petitioner is currently employed as a school security officer. The Arbitrator places significant weight on this factor.
- (iii) **Age:** Petitioner was 34 years of age at the time of accident. She is a younger individual and must live and work with her 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 significant weight on this factor.

- (iv) **Earning Capacity:** Petitioner was deemed unfit and disabled from returning to her prior employment as a police officer. She is currently employed as a school security officer and earns less pay without the opportunity for advancement. The Arbitrator places significant weight on this factor.
- (v) **Disability:** As a result of the undisputed accident, Petitioner was disabled from law enforcement, and she was awarded a duty disability pension effective 1/8/24. Petitioner had bullet fragments removed from her forehead and facial area above her nose and was diagnosed with post-traumatic stress disorder, depressive disorder, and anxiety disorders. Petitioner continues to be impaired by nightmares, sleep disturbance, and significant depression. Petitioner avoids family, friends and social gatherings and her condition has impaired her enjoyment of life. Petitioner requires multiple medications and weekly counseling sessions on a continuing basis. The Arbitrator places significant weight on this factor.

The Arbitrator finds that the appropriate award is loss of an occupation/trade as provided in Section 8(d)2 of the Act. The Arbitrator finds that Petitioner is not able to return to her usual and customary duties as a police officer. Based upon the foregoing evidence and factors, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 47.5% loss of her body as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner compensation that has accrued from 6/6/23 through 2/26/24, and shall pay the remainder of the award, if any, in weekly payments.



Arbitrator Linda J. Cantrell

January 3, 2025

DATED:

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC020614
Case Name	Stephanie Vail v. Decatur Police Department
Consolidated Cases	22WC020612
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0380
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Frank J. Bertuca
Respondent Attorney	Daniel Artman

DATE FILED: 9/12/2025

/s/ Carolyn Doherty, 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: PPD	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEPHANIE VAIL
 Petitioner,

vs.

NO: 22 WC 20614

DECATUR POLICE DEPARTMENT,
 Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission views the evidence differently and modifies the Arbitrator's Decision with respect to the issue of permanent partial disability, based on the following evaluation of the five factors outlined in Section 8.1b of the Act.

Regarding factor (i) Level of Impairment, the Commission gives no weight to this factor because an AMA rating is not in evidence.

Regarding factor (ii) Occupation, the Commission places greater weight on this factor because Petitioner returned to her pre-accident full duty employment as a police officer. Petitioner is right hand dominant. The treating surgeon released Petitioner to full duty for the right thumb based on valid FCE results which showed that Petitioner demonstrated capabilities and functional tolerances to function within the heavy physical demand level. In addition, Respondent allowed Petitioner to return to her position as police officer, which requires her to use the right thumb/hand in holding, controlling, and firing her firearm.

Regarding factor (iii) Age, the Commission gives moderate weight to this factor because Petitioner was 32 years of age at the time of the accident, noting that as a younger individual she has to live and work with the right thumb injury longer than an older individual.

Regarding factor (iv) Earning Capacity, the Commission places no weight on this factor noting there was no evidence of reduced earning capacity and that Petitioner returned to her pre-accident employment.

Regarding factor (v) Disability, the Commission places greater weight on this factor finding that despite Petitioner's testimony regarding decreased strength in her dominant right hand, limited motion of the right thumb, and arthritic pain with weather changes, Petitioner has not treated for the right thumb injury and/or condition since she was discharged from care on May 15, 2023. The also Commission notes that Petitioner testified that after this work accident, she continued to frequently play softball. As discussed previously discussed under factor (ii) Occupation, Petitioner was returned to her full job duties as police officer, which included her use of a firearm. These facts support the Commission's finding that after undergoing two surgeries, Petitioner had a very good outcome regarding her right thumb injury.

Therefore, based on the above factors, and the record taken as a whole, the Commission modifies the Arbitrator's Decision to find that Petitioner sustained permanent partial disability to the extent of 35% loss of use of the right thumb or \$23,176.85 (26.6 weeks at a max PPD rate of \$871.31) as result of the work accident on November 1, 2020.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 3, 2025 is hereby modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay to Petitioner permanent partial disability benefits of \$871.31/week for a total of 26.6 weeks representing 35% loss of use of the right thumb pursuant to Section 8 (e) of the Act.

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

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.

22 WC 20614

Page 3

September 12, 2025

O: 09/03/25

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	22WC020614
Case Name	Stephanie Vail v. Decatur Police Department
Consolidated Cases	22WC020612;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Frank J Bertuca
Respondent Attorney	John Fassola

DATE FILED: 1/3/2025

/s/Linda Cantrell, Arbitrator
Signature

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

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**

Stephanie Vail

Employee/Petitioner

v.

Decatur Police Department

Employer/Respondent

Case # **22** WC **020614**

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 **11/22/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **11/1/20**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$77,289.16**; the average weekly wage was **\$1,486.33**.

On the date of accident, Petitioner was **32** 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 **\$283.12** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$283.12**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **\$871.73 (Max. rate)**/week for **34.2** weeks, because the injuries sustained caused **45%** loss of use of the right thumb, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/28/22 through 11/22/24, 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.



Arbitrator Linda J. Cantrell

January 3, 2025

STATE OF ILLINOIS)
) SS
 COUNTY OF SANGAMON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

STEPHANIE VAIL,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 22-WC-020614
	)	
DECATUR POLICE DEPARTMENT,	)	Consolidated Case No. 22-WC-20612
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

These claims came before Arbitrator Linda J. Cantrell for trial in Springfield on November 22, 2024 on all issues. On 8/8/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right thumb while employed by Respondent on 11/1/20. (Case No. 22-WC-020614, AX2A) On 8/8/22, Petitioner filed an Application for Adjustment of Claim alleging injuries to her face and left shoulder while employed by Respondent on 1/8/22. (Case No. 22-WC-020612, AX2B) The cases were consolidated on 4/11/24.

With respect to Case No. 22-WC-020614, the parties stipulated that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 11/1/20. The parties stipulated that all medical bills have been paid and Petitioner is entitled to temporary total disability benefits for 2/25/21 and 4/19/22. Petitioner stipulated that Respondent is entitled to a credit for TTD benefits in the amount of \$283.12.

The issues in dispute in Case No. 22-WC-020614 are causal connection and the nature and extent of Petitioner's injuries. The Arbitrator has simultaneously issued a separate Decision in Case No. 22-WC-020612.

TESTIMONY

Petitioner was 32 years old, single, with no dependent children at the time of the accident. Petitioner was hired by Respondent as a police officer on 9/23/15. Petitioner testified that she injured her right thumb attempting to place a suspect into handcuffs on 11/1/20. She used both hands to pull the suspects hands off of a hospital bed bar when her right thumb bent backwards, and she felt immediate pain. Petitioner is right hand dominant.

Petitioner testified that she had surgery on her right thumb in 2007 to repair an avulsion fracture she sustained playing Rugby in college. She underwent another surgery on her right

thumb in 2012 to repair the radial collateral ligament that she injured while firefighting. Petitioner testified that she did not have any pain and was not actively treating for her right thumb prior to the 11/1/20 injury.

Following the 11/1/20 accident, Dr. Brustein performed two right thumb surgeries on 2/25/21 and 4/19/22. Respondent accommodated Petitioner's work restrictions and Dr. Brustein released Petitioner to full duty work. Petitioner testified that she cannot fully straighten or bend her thumb due to the plate and screws implanted during the second surgery. She demonstrated that she cannot touch her right thumb to her palm as she can with her left thumb. Petitioner had a greater mass on her right thumb toward her hand compared to the left. Petitioner experiences arthritic pain with weather changes and decreased grip strength.

Petitioner testified that on 1/8/22 she was operating a patrol car and attempted to initiate a traffic stop of a vehicle that was disobeying traffic laws. Petitioner followed the vehicle until it came to a stop and the driver exited his vehicle and fled on foot. Petitioner pursued the driver on foot and observed the driver on the other side of a chain-link fence. Petitioner observed the driver raise a gun and fire a shot at her. She felt immediate pain in her face and observed bleeding prior to being transported to the hospital.

Petitioner testified that she sustained a bullet fragment in the left side of her forehead and the right upper side of her nose. Petitioner admitted that prior to 1/8/22 she had been receiving treatment with counselor Ms. Teri Ulis who provides mental health services to first responders for Respondent. Ms. Ulis referred Petitioner to another mental health professional Ms. Kim Peters whom Petitioner treated with for depression and post-traumatic stress disorder prior to 1/8/22. Petitioner attended counseling sessions with Ms. Peters from 11/22/21 through 1/3/22; however, Petitioner was able to perform her job duties as a police officer during that period.

Petitioner testified that after the 1/8/22 incident, her mental health providers disabled her from law enforcement duties. Petitioner testified that after 1/8/22 her medication dosages and counseling sessions increased. Petitioner treated with her primary care physician Dr. Roberto Pabalate from 3/2/22 through 8/15/22 for sleep difficulties and medication management. Ms. Ulis referred Petitioner to the Hanley Center in Florida on 12/17/22 where she was voluntarily admitted for alcohol abuse. Petitioner testified that her alcohol abuse increased after the 1/8/22 shooting. She was treated and released and continued her treatment with Dr. Bashir in Illinois.

Petitioner testified that the expenses contained in PX14 were for medications and treatment she received as a result of the 1/8/22 accident. She testified that the balance of \$8,535.79 represents money owed to her as she paid all of her medical bills. Petitioner testified that at times her medical card through the worker's compensation carrier denied payment of her medications and she paid out-of-pocket.

Petitioner testified that the pension board had her examined by various doctors in relation to her duty disability pension claim, including Dr. Killian, Dr. Pan, and Dr. Jeckel. She was examined by Dr. Thomas Campion on 8/8/23 pursuant to Section 12 of the Act. Petitioner testified that she provided all four physicians with a history of her prior mental health treatment

and conditions. Petitioner was awarded a duty disability pension from the City of Decatur Police Pension Board effective 1/8/24.

Petitioner is currently employed as a security officer for the Decatur school district. She monitors and escorts students in an unarmed position, including breaking up fights, running bags through a metal detector, and using a wand to perform weapon checks. She earns \$21.57 per hour and works 35 to 40 hours per week. Petitioner is off work during the summer session. Petitioner testified that she is not aware of any advancement opportunities in her current employment, including higher rank or compensation, like she had as a police officer.

Petitioner takes Naltrexone, Xanax, Prazosin, Trintellix, Rexulti, Clonazepam, and Zofran. She feels fatigued and takes medication to assist with sleep. Petitioner wakes at night feeling panicked and sweating profusely. She fights in her sleep and has regular nightmares about being shot in the face. Petitioner testified that if she does not have to get up in the morning for work and has nothing planned, she has no motivation to get out of bed. She is working with her psychiatrist to properly care for her dogs and maintain housework because she has no motivation, and she feels like there is no point in living. Petitioner testified that several times a week she has thoughts of being shot when she is awake. She testified that working around children with social media is difficult because there is a video from her body cam showing her get shot in the face. Petitioner avoids social interaction with friends and family.

Petitioner is currently undergoing counseling with Tara Ullis one hour per week. She treats with nurse practitioner psychiatrist Emily Barker for two hours every other week for a more intense therapy session. She also sees nurse practitioner psychiatrist Crystal Cargill once a month for medication management.

On cross-examination, Petitioner testified that she fractured the tip of her right thumb in September 2020 while playing softball. She stated that the injury on 11/1/20 was to a different part of the thumb and was at the base. Petitioner testified that after her thumb injury on 11/1/20 she went to Occupational Health, and they allowed her to return to work with restrictions. She was released at MMI without restrictions on 11/9/20.

Petitioner testified that after her first surgery with Dr. Brustein she was released to full duty work on 6/30/21. She was working full duty at the time of her accident on 1/8/22. She underwent a second surgery on her right thumb in 2022 and was released to full duty work on 10/28/22. She has not returned to Dr. Brustein since her last visit in May 2023 and she is not actively treating for her thumb injury. Petitioner is not taking any medications for her thumb condition. She frequently plays softball and has played 10 games in one weekend. Petitioner uses her right hand to throw and grip the bat, and she has played umpire. Petitioner coached basketball for a short time. She testified that her right thumb is not involved when she throws a softball as it is used more for stabilization, and she uses her fingers and wrist to throw. She has some issues gripping a bat, but she mostly grips with her front left hand when swinging. She denied any injuries to her right thumb after 11/1/20.

Petitioner agreed that she began receiving mental health treatment with Ms. Ullis in 2020. At the time of her 1/8/22 accident, Petitioner was treating with Kim Peters once a week. She was

prescribed Trazadone and had an inpatient mental health stay in 2009. She was hospitalized in 2020 due to medication issues. Petitioner was diagnosed with PTSD in November 2021. Her FOID card was revoked in September 2021 at which time she took a leave of absence. At that time Petitioner was required to keep her revolver at the police station and she could not take it home. Petitioner testified that her prior mental health issues involved family issues and childhood trauma. She agreed that she was taking prescription medication for mental health conditions prior to 1/8/22. Petitioner agreed that her counselors are treating her for other stressors besides the shooting on 1/8/22 because they are “working on her as a human being”. Her treatment with Ms. Barker is more focused on the shooting because she does intense eye movement desensitization and reprocessing therapy.

Petitioner testified that after the 1/8/22 accident her FOID card was reinstated. She testified that her FOID card was revoked in September 2021 because it was reported that she was hospitalized in November 2009, even though her FOID card was originally issued in 2015. She obtained a psychological evaluation with Dr. Hall to get her FOID card reinstated and had to take a leave of absence for a couple of weeks to straighten things out. She does not have an active FOID card at this time.

Petitioner no longer takes Gabapentin for anxiety or Meloxicam for arthritis. She testified that she did not require the bi-weekly two-hour intense therapy sessions prior to 1/8/22.

MEDICAL HISTORY

On 11/2/20, Petitioner presented to Occupational Health and Wellness and provided a consistent history of the work injury. (PX16) Petitioner was fitted with a thumb splint and provided work restrictions. On 11/9/20, Petitioner returned to Occupational Health and Wellness and was released at MMI without restrictions. (RX2)

On 11/20/20, Petitioner presented to Dr. Marshall Brustein, an orthopedic hand specialist, whom she previously treated with. (PX2) Petitioner reported a consistent history of injury. Dr. Dr. Brustein recommended a thumb splint and work restrictions. Petitioner underwent physical therapy and a cortisone injection that did not improve her symptoms.

On 2/25/21, Dr. Brustein performed a right ulnar collateral ligament and dorsal capsular repair. (PX1, p. 5-6) Petitioner was ultimately released to full duty work on 6/30/21.

Petitioner returned to Dr. Brustein with ongoing right thumb issues and on 4/19/22 he performed a metacarpophalangeal joint fusion. (PX1, p. 24-26) Dr. Brustein released Petitioner to full duty work on 10/28/22.

CONCLUSIONS OF LAW

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

When a preexisting condition is present, a claimant must show that “a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee’s

current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition.” *St. Elizabeth’s Hospital v. Workers’ Comp. Comm’n*, 864 N.E.2d 266, 272-273 (5th Dist. 2007). 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 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); see also *Illinois Valley Irrigation, Inc. v. Indus. Comm’n*, 362 N.E.2d 339 (Ill. 1977).

The law holds that an accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it is a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Indus. Comm’n*, 797 N.E.2d 665, 672 (2003). [Emphasis added]. “Petitioner need only show that some act or phase of the employment was a causative factor of the resulting injury.” *Fierke v. Industrial Commission*, 723 N.E.2d 846 (3d Dist. 2000).

Additionally, 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).

There is no dispute that Petitioner suffered multiple acute injuries to her right thumb prior to 11/1/20. Petitioner underwent a right thumb surgery in 2007 to repair an avulsion fracture, and in 2012 she underwent surgery to repair the radial collateral ligament. There is no evidence that Petitioner had any ongoing problems or treatment for her right thumb from 2012 until she fractured the tip of her thumb in September 2020 playing softball. Petitioner was hired by Respondent as a police officer on 9/23/15 and was able to perform her full job duties until the accident on 11/1/20. Petitioner was not actively treating and there was no evidence that she had any limitations to her right thumb at the time of the work accident.

Petitioner testified that she experienced immediate pain following the 11/1/20 incident. She presented for treatment the following day and reported a consistent history of injury to her treating physicians.

Based on the evidence as a whole, the Arbitrator finds that Petitioner’s current condition of ill-being is causally connected to the work accident of 11/1/20.

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(v).

- (i) **Level of Impairment:** Neither party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.
- (ii) **Occupation:** Petitioner was released to full duty work without restrictions and returned to her pre-accident position as a police officer with Respondent. The Arbitrator places some weight on this factor.
- (iii) **Age:** Petitioner was 32 years of age at the time of the accident. She is a younger individual and must live and work with her 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 greater 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 her pre-accident employment with Respondent. The Arbitrator places some weight on this factor.
- (v) **Disability:** As a result of the undisputed accident, Petitioner sustained injuries to her right thumb that resulted in two surgical procedures, including an ulnar collateral ligament and dorsal capsular repair on 2/25/21, followed by a metacarpophalangeal joint fusion on 4/19/22. Petitioner was released to full duty work on 10/28/22 and returned to work as a police officer for Respondent.

Petitioner testified that she has decreased strength in her dominant right hand, limited motion of her thumb, and arthritic pain with weather changes. She demonstrated that she cannot fully straighten or bend her thumb due to the plate and screws and she cannot touch her right thumb to her palm like she can with her left thumb. Petitioner had a greater mass at the base of her right thumb compared to the left.

Petitioner has not sought treatment for her right thumb condition since being released by Dr. Brustein in May 2023 and she does not take medication for her symptoms. Petitioner testified that she continues to play softball, including as many as 10 games in a single weekend. She is able to pitch and grip a bat with her right hand. Petitioner is able to perform her current job duties as a school security officer, which requires her to break up fights, lift bags through a metal detector, and wand students for weapons. 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 **45%** loss of use of her right thumb, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 10/28/22 through 11/22/24, and shall pay the remainder of the award, if any, in weekly payments.



Arbitrator Linda J. Cantrell

January 3, 2025

DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	15WC011848
Case Name	Brenda E Hudson v. R&L Managment Co
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	25IWCC0381
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Crystal Figueroa
Respondent Attorney	Brian Bendoff

DATE FILED: 9/15/2025

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRENDA HUDSON,

Petitioner,

vs.

NO: 15WC011848

R&L MANAGEMENT CO.,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on remand from the Circuit Court of Cook County. In its Order, filed February 3, 2023, the Court found:

In this case - in attempting to mount her work counter stool - Hudson was indisputably engaged in an act "that the employee might reasonably be expected to perform incident to his or her assigned duties." Under *McAllister*, that was enough to establish that the injury "arose out of her employment. See *McAllister*, 2020 IL 124848 at ¶ 61. It was unnecessary, therefore, for Hudson to have established that she had been exposed to a greater degree of risk than the general public as it was unnecessary to apply a "neutral risk" analysis given the circumstances of the accident.

Cir.Ct.Order at 3. The Court ordered that the Decision and Opinion on Review of the Commission be set aside and the matter remanded to the Commission for entry of factual findings as to the remaining disputed issues:

- o Whether [Petitioner's] current condition of ill-being is causally related to the injury (ISSUE F);
- o Whether the medical services that were provided to Petitioner were reasonable and necessary and whether Defendant has paid all appropriate charges for any such reasonable and necessary medical services (ISSUE J);

- o Whether Temporary Total Disability (TTD) benefits are due (ISSUE K);
- o The nature and extent of [Petitioner's] injuries (ISSUE L);
- o Whether Defendant is due any credits (ISSUE N);

Id. at 3-4.

Causation

Petitioner's Application for Adjustment of Claim alleges injuries to her "low back, rib cage, right shoulder." Petitioner testified that when she fell, she felt pain in "My shoulders, my back, really my back and my shoulders." *T.16*. Petitioner testified that, at the Advocate Christ Emergency Department (ED), she reported pain in her low back, left shoulder and ribs. *T.18*. This is consistent with the February 26, 2015 ED records which reflect:

She landed on her left shoulder, lower back, has bilat anterior lower rib pain and left shoulder pain as well as some mild left paraspinal lumbar muscle tenderness. She has full range of motion of her shoulder, no crepitus to the chest wall, no ecchymosis, her shoulder is tender over the a.c. joint but no instability. ... The rest of her extremity exam is unremarkable except for some mild muscle tenderness to her medial right thigh.... She has no leg tenderness. She has no midline spine tenderness, no head or neck injury. Neurologic exam with normal strength and sensation bilaterally.

Px1 at 35.

In one record, Dr. Elise Lovell diagnosed "Chest wall contusions, left shoulder strain, mechanical fall." *Px1 at 36*. In another record, Dr. Lovell's diagnosis was "Fall, musculoskeletal strain, chest wall pain, shoulder injury." *Id. at 43*. Petitioner was returned to "regular activity and work." *Id. at 44*.

On March 2, 2015, Petitioner saw her primary care physician, Dr. Rafael Vargas-Zapata, who noted Petitioner "hurt her back and ribs" after slipping off a chair at work. *Px2 at 10*. He noted that the ED evaluation was unremarkable and Petitioner had no head or neck symptoms. *Id.* This record does not mention any shoulder pain. Petitioner complained of anterior rib cage pain and low back pain. *Id.* Dr. Vargas-Zapata gave a very generic diagnosis of "multiple trauma" and did not take Petitioner off work. *Id.*

Petitioner returned to Dr. Vargas-Zapata on March 18, 2015 with complaints of back and shoulder pain and pain across the top part of her stomach. *Id. at 6*. The Commission notes that, at this visit, Petitioner complained of *right* shoulder pain (*Id.*) but at the ED, three weeks prior, she complained of *left* shoulder pain. Dr. Vargas-Zapata again made a general diagnosis of "multiple trauma" but this time gave Petitioner a retroactive off-work note back to February 26, 2015 (the date of accident) until further notice. *Id. at 9*. There are no other records from Dr. Vargas-Zapata in evidence.

The Commission notes that, according to the June 14, 2015 report of Respondent's §12 examiner, Dr. Mark Levin, Petitioner told him that she was seen by a Dr. "Hasan" on or about April 4, 2015 on referral from her attorney and that Dr. Hasan recommended a cervical epidural steroid injection. *Rx1 at 2*. However, none of Dr. Hasan's (or Hassan's) records are in evidence and Petitioner was never asked whether she saw Dr. Hasan. The lack of records is especially confounding since Petitioner was seen by Dr. Carlos Halwaji, D.C. for an EMG/NCV on April 13, 2015, and this record indicates that Petitioner was referred by "Dr. Hassan." *Px7 at 7*. At this visit, Dr. Halwaji recorded Petitioner's complaints of pain in her neck, mid and low back pain, and numbness/tingling in her arms and legs. *Id.* The Commission notes this is the first time, post-accident, that neck pain and numbness/tingling were documented in the records. Dr. Halwaji also noted Petitioner's "past medical history is unremarkable" so it appears that he was unaware that Petitioner had sustained a previous injury in 2014 when she slipped and fell at a Circle K gas station for which she had a pending lawsuit. *T.39-41*. After that accident, Petitioner treated for both shoulders, her back and her neck including an injection. *Id.*

On February 24, 2014, one year prior to the work accident at issue before us, Petitioner underwent a cervical MRI on referral from Dr. Saoud Dabbah, D.C. for complaints of "neck pain with radiculopathy to the right shoulder." *Px3 at 5-7*. The impression included "C5-C6, postsurgical fusion is suggested." *Id. at 7*.

That previous slip and fall accident and subsequent treatment are significant because Dr. Halwaji's April 13, 2015 EMG/NCV revealed radiculitis affecting the C7-T1 and L4-S1 levels bilaterally. Dr. Halwaji also reviewed Petitioner's cervical and lumbar MRIs. He interpreted the first one as showing a C5-6 postsurgical fusion and disc bulging at multiple levels. The lumbar MRI showed L4-5 disc bulging. However, the MRIs that Petitioner underwent after her work accident were performed on April 16, 2015 (lumbar), April 20, 2015 (thoracic) and April 27, 2015 (cervical), which were *after* Dr. Halwaji's EMG/NCV. Therefore, it appears that Dr. Halwaji only reviewed Petitioner's MRIs from 2014 prior to her work accident.

The post-accident April 16, 2015 lumbar MRI did not list a comparison film and only showed minor bulging of L4-5 with no significant foraminal narrowing and the spinal canal was patent. *Px3 at 8-9*. The April 27, 2015 cervical MRI, however, did have a comparison to the MRI on February 24, 2014 and showed "no significant interval change." *Id. at 16*. Petitioner's April 20, 2015 thoracic MRI revealed no evidence of acute fracture or subluxation and, although spondylotic changes were seen, the spinal canal, the cord and neural foramina were grossly unremarkable. *Id. at 10-11*.

The Commission points out that, although there is no visit record in evidence since it was prior to Petitioner's work accident, the billing records indicate Petitioner saw Dr. Abdellatif on April 15, 2014, ten months prior to her work accident. *Px8 at 4*. The billing summary indicates that this visit was for "Brachial neuritis or Radiculitis," "Pain in joint, shoulder region" and "Unspecified myalgia and myositis." *Id.* This supports the February 24, 2014 MRI report which indicates Petitioner had "neck pain with radiculopathy to the right shoulder." Therefore, there is strong evidence that Petitioner had neck pain and right shoulder pain with radiculitis prior to her work accident.

Petitioner underwent an MRI of the right shoulder on April 23, 2015. *Px3 at 12*. This was also the date of Petitioner's first post-accident visit with Dr. Dabbah, D.C., who Petitioner had seen previously for her fall at the gas station. *Px4 at 2, 10*. Portions of his handwritten notes are difficult to interpret but he documented pain in Petitioner's right shoulder and mid to lower back. *Id. at 10*. He took Petitioner off work and recommended continued treatment but he did not list any specific assessments or diagnoses. *Id.*

Petitioner was seen by Respondent's §12 examiner, Dr. Levin, on June 4, 2015. *Rx1*. Petitioner complained of 8/10 right shoulder pain with numbness to right fingers, 7-10/10 lumbar pain, and 5-6/10 central neck pain. Dr. Levin noted that she walked with a cane for balance, which she decided to use on her own. He noted that her gait was exaggerated and slow during the examination but different when she left. He noted that Petitioner had a "prominence of where the neck crease is, which she states is not a scar." *Id. at 3*. She complained of tenderness over the cervical paraspinal muscles bilaterally with no localized area of discomfort and no spasm. Similarly, Petitioner complained of tenderness over the lumbosacral junction and buttocks bilaterally with no spasm. On the upper extremity exam, she had no pain over the AC or SC joints but complained of bilateral shoulder pain with impingement testing. In the lower extremities, she had a positive Hoover's sign and positive giving way of the lower extremities bilaterally with moaning and groaning out-of-proportion to testing. She had giveaway strength of her EHLs bilaterally in the supine position. *Id. at 4*.

Dr. Levin reviewed Petitioner's cervical, lumbar and right shoulder MRIs. *Id. at 4-5*. The April 27, 2015 cervical MRI showed multilevel spondylitic changes which are chronic in nature and a fusion of C5-6. He interpreted the April 23, 2015 right shoulder MRI as being more associated with tendinitis than a full thickness tear. The April 16, 2015 lumbar MRI showed no evidence of any disc herniation or nerve impingement.

Dr. Levin found that Petitioner "has marked subjective complaints of pain over multiple areas, which are out-of-proportion to objective findings. Furthermore, the records that are provided to me list different body part areas, which are different from her history of where she was injured." *Id. at 5*. He recommended a Functional Capacity Evaluation (FCE) with validity measurement and that she hold off on any further treatment until that is performed. He specifically opined that the cervical MRI showed preexisting chronic changes unrelated to this injury and that the right shoulder complaints are inconsistent with the ED records that showed Petitioner had previously been complaining about the left shoulder. He wrote, "her diagnosis is marked subjective complaints of pain, which has not been substantiated to true objective pathology related to the work injury." *Id. at 6*.

Petitioner continued to see Dr. Dabbah (*Px4*) and saw Dr. Ossama Abdellatif for lumbar, cervical and bilateral shoulder pain on June 15, 2015. *Px7*.

Petitioner underwent the FCE on July 20, 2015 and she was found to have given "Inconsistent Performance / Unacceptable Effort." *Px5 at 22-23*. Even still, Petitioner was found to be able to perform her job with the exception of occasional kneeling. Interestingly, at the FCE, Petitioner reported pain in her *left* shoulder and low back. *Id. at 25*. The Commission finds it

inconsistent that Petitioner complained of right shoulder pain to her doctors but then told the FCE examiner that she had left shoulder pain

On July 31, 2015, Dr. Levin wrote an addendum after reviewing additional records including the actual MRI films, the EMG and the FCE. He wrote:

Correlating this with the patient's previous Independent Medical Examination of June 4, 2015, Ms. Hudson's subjective reports of complaints of pain are out-of-proportion to objective findings and from an orthopedic standpoint, there is no objective pathology related to an alleged work injury of February 16 [sic], 2015, that should prevent her from returning back to work full duty.

Furthermore, based on these findings, I cannot substantiate the need for further chiropractic therapeutic modalities. She does appear to be at maximum medical improvement and recommend that she return back to work full duty.

To specifically answer your questions in your letter dated July 20, 2015, her diagnosis is subjective reports of discomfort not substantiated by true objective orthopedic pathology from an alleged work injury of February 16 [sic], 2015. She has had excessive treatment modalities and find no evidence that she requires any additional treatment and she is not a surgical candidate. She has had excessive treatment by the chiropractor, which has not been substantiated to be for true objective orthopedic pathology. She does appear to be capable of returning back to work full duty with no restrictions and does appear to be at maximum medical improvement.

Rx2 at 2.

Petitioner attended a few more visits with Dr. Dabbah (*Px4*) and then saw Dr. James Diesfield on October 7, 2015 for pain management regarding her right shoulder. *Px6 at 3.* Dr. Diesfield performed a right shoulder injection and his note also states Petitioner "had care with Dr. Hassan and Dr. Darla." *Id.* Again, we question why Dr. Hassan's records were not submitted into evidence. It is unclear who Dr. Darla is but it's possible this refers to Dr. Dabbah.

Although the arbitration hearing wasn't held until November 15, 2019, the last medical record in evidence is a right knee x-ray report dated April 14, 2016, which indicates Petitioner was "status post total knee replacement." *Px3 at 3.* We note that Petitioner did not have any right knee complaints in the post-accident records and this x-ray was ordered by a Dr. Aravind Athiviraham from whom there are no records in evidence. Also, although Petitioner testified that she still sees her primary care physician, Dr. Vargas, the last record from him is from March 18, 2015, almost five years prior to trial. *T.24, Px2 at 6.*

Interestingly, when questioned about her treatment with Dr. Dabbah, Petitioner testified:

Q Yeah. So when we are comparing that slip and fall in 2014, was he treating you for the same body parts as your work injury in February 2015?

A Well, it all coincided, no, I don't remember.

- Q Following the slip and fall at Circle K, were you working at your job full duty?
A Yes, yes.
Q Did you have any issues or complaints of pain?
A Periodically, but I just stopped work. T.50.

In other words, Petitioner did have complaints of pain prior to her February 2015 work injury and she would periodically “just [stop] work.” Petitioner also testified:

- Q You did not injure your right knee as a result of the February 26, 2015 accident, right?
A Well, we don't know what I injured. You got to admit, things pop up as you get older. I'm not in the best shape now. I'm going to be honest with you. I had no problems until I started falling. I was fine. I'd probably still be working.
Q When did you begin falling?
A When I fell on that ice.
Q And that was a year prior to this work accident, correct?
A Right. T.52-53.

Therefore, Petitioner does not even know what body parts she is claiming to be related to her work injury at Respondent and admitted that all of her problems actually started during the previous fall at the gas station a year prior to her work injury.

Based on the above and a careful review of all the evidence, the Commission finds that Petitioner only proved that she sustained a chest contusion, *left* shoulder strain, and low back pain, which based on the ED diagnosis was a low back musculoskeletal strain. We find that all of her other conditions including neck pain, cervical and lumbar radiculopathy, right shoulder tendinitis and/or derangement and right knee pain were not causally related. Further, we find that Petitioner failed to prove that *any* of her current conditions of ill-being remain causally related to her work injury based on the persuasive opinion of Dr. Levin and the invalid/ inconsistent results of the FCE.

Temporary Total Disability (TTD)

On the Request for Hearing form, Petitioner claimed she was entitled to 20-4/7 weeks of temporary total disability (TTD) benefits from “2/26/15 – 7/20/15.” Therefore, Petitioner seems to acknowledge that she had reached maximum medical improvement as of the July 20, 2015 FCE even though she continued to receive medical treatment and remained off work. We note Petitioner testified that she has not applied for any other work since her accident “because I have been sick,” which is unrelated to her work accident. T.52.

We note that Petitioner was returned to regular activity and work by the ED on February 26, 2015 and her primary care physician, Dr. Vargas-Zapata, did not give her an off-work note at the first visit on March 2, 2015. It wasn't until March 18, 2015 that Dr. Vargas-Zapata gave Petitioner a retroactive off-work note, which we find is contradicted by Dr. Vargas-Zapata's own

assessment just two weeks prior and also the assessment of the ED doctor that Petitioner could work full duty. We are mindful that there are no additional records from Dr. Vargas-Zapata in evidence and find Dr. Vargas-Zapata's March 18, 2015 off-work note to be effective as of that day.

We find that Petitioner reached maximum medical improvement as of the July 20, 2015 FCE as claimed by Petitioner on the Request for Hearing form and as supported by the opinion of Dr. Levin. Therefore, Petitioner is entitled to 17-6/7 weeks of temporary total disability benefits from March 18, 2015 through July 20, 2015.

The parties stipulated that, at the time of her injury, Petitioner was married with no dependent children and that her average weekly wage (AWW) in the year preceding her injury was \$296.00. Based on the date of her accident, we find that Petitioner is entitled to the minimum TTD rate of \$253.00 per week.

Medical Expenses

Petitioner requests the unpaid medical expenses documented in *Px8*. Having found Petitioner's left shoulder, chest contusion and lumbar strain causally related, we find that she is entitled to the following expenses under §8(a) of the Act, payable pursuant to the fee schedule in §8.2 of the Act.:

ProClinics

4/13/15	Dr. Carlos Halwaji EMG/NCV and related charges	\$12,700.00
6/15/15	Dr. Ossama Abdellatif	\$117.00
	Total:	----- \$12,817.00

We deny the charges for the April 15, 2014 visit with Dr. Abdellatif because it was prior to Petitioner's date of accident. We also deny the charges for the May 4, 2015 visit because there are no supporting records.

Advocate Christ Medical Center

Petitioner's *Px8* summary page claims medical expenses of \$1,394.77 for "Christ Medical Center." However, it is unclear how this balance was calculated. *Px8* does not include any billing records from Christ Medical Center but there are some bills contained in *Px1*. Many of these are for unrelated follow-up chest studies after a lung nodule was found in the ED chest x-ray and bills other conditions, which we also find unrelated. The Commission finds that Petitioner is only entitled to the \$2,640.00 in charges for the ED visit on February 26, 2015. *Px1 at 6*.

Chicago Pain Medicine

The Commission denies all of these charges because they are for Petitioner's visit with Dr. Diesfield and *right* shoulder injection on October 7, 2015, which we find not causally related to Petitioner's work accident at Respondent.

Dr. Saoud Dabbah

The Commission finds that Petitioner is entitled to \$7,435.00 in expenses for Dr. Dabbah from April 23, 2015 through the date of the FCE on July 20, 2015.

Preferred Open MRI

Based on our findings regarding causation, the Commission finds that Petitioner is only entitled to the expenses for the April 16, 2015 Lumbar MRI (\$2,100.00) and the April 20, 2015 Thoracic MRI (\$2,100.00).

Accelerated Rehab

The Commission affirms the Arbitrator's award of \$922.46 for the July 20, 2015 FCE.

In summary, the Commission finds that Petitioner is entitled to the following medical expenses, payable pursuant to the fee schedule in §8.2 of the Act:

ProClinics	\$12,817.00
Advocate Christ Medical Center	\$2,640.00
Dr. Saoud Dabbah	\$7,435.00
Preferred Open MRI	\$4,200.00
Accelerated Rehab	\$922.46

Total:	\$28,014.46

Permanent Partial Disability (PPD)

Having found that Petitioner only sustained a left shoulder strain, a chest contusion and lumbar muscular strain due to her accident, we analyze the five permanency factors in §8.1b(b) of the Act as follows:

- (i) A.M.A. Impairment Rating: Neither party introduced an A.M.A. impairment rating so we give no weight to this factor.
- (ii) Occupation: Petitioner was a Cashier/Clerk. She was found to be capable of her sedentary job by Dr. Levin and her Functional Capacity Evaluation was determined to be invalid. We give this factor little weight.
- (iii) Age: Petitioner was 66 years old at the time of her accident, which we also give little weight. Petitioner is an older individual who removed herself from the workforce due to unrelated illness.
- (iv) Future Earning Capacity: We give no weight to this factor because there is no evidence regarding Petitioner's future earning capacity as it relates to her work injury.
- (v) Evidence of disability corroborated by the treating medical records: Petitioner testified that she isn't sure what conditions are related to her accident versus simply getting old or from her previous fall in 2014. There are numerous complaints documented in the medical records but we find these are for unrelated conditions. None of Petitioner's treating physicians testified or directly opined regarding the causation of Petitioner's various conditions. We find the opinions of Dr. Levin, Respondent's §12 physician, persuasive and give this factor little weight.

Therefore, we make the following permanency awards pursuant to §8(d)2 of the Act: 1) 1% of the person as a whole for the left shoulder strain, 2) 1% of the person as a whole for the chest contusion, and 3) 2% of the person as a whole for the lumbar strain. Based on the date of her accident, we find that Petitioner is entitled to the minimum permanent partial disability (PPD) rate of \$253.00 per week.

Respondent's Credit

Although Respondent did not file a Petition for Review, the Commission notes that its brief states, "D. The Arbitrator did not err by awarding Responding a credit of \$23,464.34 for non-occupational indemnity benefits and medical bills paid through Petitioner's group medical plan." *R-brief at 13*. However, the Arbitrator did not award such a credit. The Arbitrator only awarded credit of \$85.30 for TTD previously paid, as stipulated by the parties on the Request for Hearing form. The Request for Hearing form also does *not* indicate that Respondent paid any medical bills under §8(j) of the Act. Therefore, we find that Respondent is entitled to credit of \$85.30 for TTD paid.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$253.00 per week for a period of 17-6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit of \$85.30 for temporary total disability payments previously paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$253.00 per week for a period of 5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use of 1% of the person as a whole for the left shoulder strain.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$253.00 per week for a period of 5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use of 1% of the person as a whole for the chest contusion.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$253.00 per week for a period of 10 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of use of 2% of the person as a whole for the lumbar strain.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$28,014.46 for medical expenses under §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$37,600.00. 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.

September 15, 2025

/s/ Maria E. Portela

SE/

/s/ Marc Parker

O: 7/24/25

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/s/ Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC008471
Case Name	Shelonda Fuller v. State of Illinois - Chester Mental Health
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0382
Number of Pages of Decision	11
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 9/15/2025

/s/ Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHELONDA FULLER,

Petitioner,

vs.

NO: 24 WC 8471

CHESTER MENTAL HEALTH,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical care, and temporary total disability (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. The Commission hereby 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 December 23, 2024 is hereby affirmed and adopted.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

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.

September 15, 2025

CAH/pm

d: 9/11/25

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	24WC008471
Case Name	Shelonda Fuller v. State of Illinois - Chester Mental Health
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Aaron Wright

DATE FILED: 12/23/2024

/s/William Gallagher, 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 23, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF WILLIAMSON)

25IWCC0382

☐	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)

Shelonda Fuller
Employee/Petitioner

Case # 24 WC 08471

v. Consolidated cases: n/a

State of IL/Chester Mental Health
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Herrin, on November 7, 2024. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

ICArbDec19(b) 2/10 69 W Washington Street Suite 900 Chicago, IL 60602 312/814-6611 Toll-free 866/352-3033 Web site: www.iwcc.il.gov
Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

FINDINGS

On the date of accident, April 28, 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 \$40,713.19; the average weekly wage was \$782.94.

On the date of accident, Petitioner was 50 years of age, single with 0 dependent child(ren).

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

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00. The parties stipulated TTD was paid from April 25, 2024, through August 21, 2024.

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

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

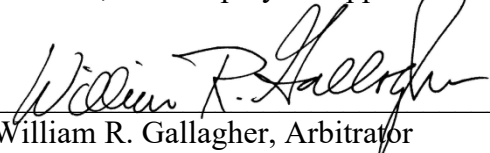
Respondent shall authorize and pay for prospective medical treatment including, but not limited to, right total knee replacement surgery as recommended by Dr. Matthew Bradley.

Respondent shall pay Petitioner temporary total benefits of \$521.96 per week for 32 2/7 weeks, commencing March 26, 2024, through November 7, 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.


 William R. Gallagher, Arbitrator

December 23, 2024

ICArbDec19(b)

Shelonda Fuller v. State of IL/Chester Mental Health

Page 2

24 WC 008471

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment by Respondent on April 28, 2023. According to the Application, Petitioner "Slipped and fell" and sustained an injury to her "Right knee/leg" (Arbitrator's Exhibit 2). This case was tried in a 19(b) proceeding and Petitioner sought an order for payment of medical bills and temporary total disability benefits as well as prospective medical treatment. Respondent stipulated Petitioner sustained a work-related accident on April 28, 2023, but disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

In respect to temporary total disability benefits, Petitioner claimed she was entitled to temporary total disability benefits of 32 2/7 weeks, commencing March 26, 2024, through November 7, 2024 (date of trial). Respondent paid Petitioner temporary total disability benefits commencing April 25, 2024, through August 21, 2024 (Arbitrator's Exhibit 1).

Petitioner worked for Respondent as a service worker. On April 28, 2023, Petitioner was working in the dish room. There was an accumulation of water on the floor from the dishwasher. When Petitioner attempted to hand a tray to another person, she turned and slipped and fell on the concrete floor. When she did so, she struck her right knee on the floor.

Petitioner was seen in the ER of Chester Memorial Hospital on April 28, 2023. At that time, Petitioner provided a history of the accident and complained of right knee and right shoulder pain. An x-ray of the right knee was obtained which revealed mild tricompartmental degenerative disease, but no fractures. An x-ray of the right shoulder was obtained which revealed mild glenohumeral disease. Petitioner was diagnosed with sprains of the right knee and right shoulder, prescribed pain medication and discharged (Petitioner's Exhibit 3).

On May 3, 2023, Petitioner was evaluated by Dr. Franklin James, her family physician. At that time, Petitioner informed Dr. James she fell on a wet floor at work and landed on her right knee and right shoulder. Dr. James opined Petitioner had pain in the right knee, right shoulder, and both hands. He directed Petitioner to continue with over-the-counter pain medications (Petitioner's Exhibit 4).

Petitioner was again seen by Dr. James on May 10, 2023. Petitioner's pain symptoms had improved and Dr. James authorized Petitioner to return to work, but with a 30 pound lifting restriction and not bending her right knee more than 45° (Petitioner's Exhibit 4).

Petitioner was seen by Dr. James on August 21, 2023. At that time, Petitioner complained of difficulty bending her right knee, but Dr. James opined Petitioner's condition had improved and he authorized her to return to work without restrictions (Petitioner's Exhibit 4).

Petitioner was subsequently seen by Dr. James on December 7, 2023. At that time, Petitioner continued to complain of right knee pain which had been present since the accident of April, 2023. Dr. James noted Petitioner was scheduled to undergo an MRI of the right knee on December 18, 2023.

The MRI of Petitioner's right knee was performed on December 18, 2023. According to the radiologist, the MRI revealed that the body of the medial meniscus was extra articularly subluxed,

chondral thinning of the medial femoral condyle, and subchondral cyst formation in the medial femoral condyle (Petitioner's Exhibit 5).

Petitioner was subsequently seen by Dr. James on December 21, 2023. At that time, he reviewed the MRI findings, ordered a knee brace, and referred Petitioner to an orthopedic surgeon (Petitioner's Exhibit 4).

Petitioner was evaluated by Dr. Robert Brophy, an orthopedic surgeon, on January 25, 2024. At that time, Petitioner informed Dr. Brophy of the accident of April, 2023, and complained of chronic right knee pain, especially with prolonged standing, walking and lower extremity exercises. Dr. Brophy diagnosed Petitioner with chronic right knee pain with effusion of the right knee. He administered an injection into the right knee and ordered physical therapy. He imposed work restrictions of no use of the right lower extremity and seated work only (Petitioner's Exhibit 6).

Petitioner received physical therapy from February 5, 2024, through February 20, 2024. When seen on February 5, 2024, Petitioner informed the therapist of the April, 2023, accident and the treatment she received thereafter (Petitioner's Exhibit 7).

Dr. Brophy saw Petitioner on February 22, 2024. At that time, Petitioner advised the injection did not give her much relief and she still had significant right knee pain with weight bearing.

At the direction of Respondent, Petitioner was examined by Dr. Michael Nogalski, an orthopedic surgeon, on February 28, 2024. In connection with his examination of Petitioner, Dr. Nogalski reviewed medical records and diagnostic studies provided to him by Respondent. When seen by Dr. Nogalski, Petitioner informed him of the accident of April 28, 2023, and that she had pain/swelling in her right knee which had become progressively worse. Dr. Nogalski reviewed the MRI of December 18, 2023, and opined it revealed chondrosis and general degeneration of the medial compartment with extrusion of the medial meniscus (Respondent's Exhibit 2).

Dr. Nogalski opined Petitioner had right knee osteoarthritis with essentially symmetrical left sided osteoarthritic findings. He opined that, as a result of the accident of April 28, 2023, Petitioner had sustained a contusion of the right knee for which she was treated. In respect to the osteoarthritis of the right knee, Dr. Nogalski opined this was not related to the accident and Petitioner's current right knee condition was related to same as well as deconditioning, obesity, and varus malalignment (Respondent's Exhibit 2).

Petitioner was subsequently seen in the ER of Sparta Community Hospital on March 25, 2024. At that time, Petitioner complained of right knee pain/swelling which had been going on the past year. She advised she was directed to go back to work by the "workman's comp people", but when she did so, she developed chronic pain worsened by standing/walking. Petitioner was diagnosed with chronic knee pain and directed to apply ice, wear an elastic wrap, elevate her leg, and rest. Petitioner was directed to not engage in any strenuous activity and was advised to follow up with her healthcare provider (Petitioner's Exhibit 5).

On April 1, 2024, Petitioner was evaluated by Dr. Matthew Bradley, an orthopedic surgeon. At that time, Petitioner informed Dr. Bradley of the accident of April 28, 2023, and the medical treatment

she received thereafter. Petitioner complained of medial right knee pain which had been present for many years, but not the significant pain she had experienced since the accident. Dr. Bradley reviewed the MRI and his interpretation of it was consistent with that of the radiologist. He opined Petitioner had right knee arthropathy, an exacerbation of underlying degenerative disease, and an irreparable medial meniscus tear. He noted Petitioner had received non-operative treatment, but continued to remain symptomatic. Dr. Bradley recommended Petitioner consider right knee replacement surgery (Petitioner's Exhibit 8).

Petitioner was again seen by Dr. Bradley on April 18, 2024. At that time, Petitioner continued to complain of significant right knee pain as well as instability/catching in her right knee. Dr. Bradley again recommended Petitioner undergo total knee replacement surgery and Petitioner indicated she wanted to proceed with same (Petitioner's Exhibit 8).

Dr. Bradley was deposed on May 31, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Bradley's testimony was consistent with his medical records and he reaffirmed the opinions contained therein. In regard to his review of the MRI, Dr. Bradley testified it revealed arthritis/degeneration mostly on the inside of the knee as well as the medial meniscus being "...completely torn and extruded, or pushed outside the knee partially." Dr. Bradley stated that the osteoarthritis in Petitioner's left knee was similar to her right knee, but was not giving Petitioner any significant symptoms. He testified Petitioner should undergo total knee replacement surgery and related the need for same to the accident of April 28, 2023 (Petitioner's Exhibit 10; pp 12-24).

On cross-examination, Dr. Bradley agreed that, prior to the accident, Petitioner may have had a small degenerative "fraying" of the medial meniscus. However, he stated that it was the fall which caused the meniscus to be torn and its "extrusion" (Petitioner's Exhibit 10; pp 25-26).

At the request of Respondent, Dr. Nogalski prepared a supplemental report on August 13, 2024, based upon his review of Dr. Bradley's medical records. He reaffirmed his prior opinion regarding Petitioner's right knee condition. In respect to the MRI scan, he stated there were no "acute findings" and the "extrusion" was because of secondary soft tissue restraints as Petitioner's osteoarthritic condition had progressed (Respondent's Exhibit 3).

Dr. Nogalski was deposed on September 23, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Nogalski's testimony was consistent with his medical reports and he reaffirmed the opinions contained therein. Specifically, in respect to causality, Dr. Nogalski testified Petitioner sustained a contusion as a result of the accident and the other right knee findings were because of her osteoarthritic condition and morbid obesity (Respondent's Exhibit 4; pp 16-17).

On cross-examination, Dr. Nogalski agreed that the mechanism of injury, as described by Petitioner, could cause an injury to a knee. He was also not aware if Petitioner had any right knee treatment prior to April 28, 2023 (Respondent's Exhibit 4; p 28).

At trial, Petitioner testified she continues to experience pain/swelling in her right knee, especially when walking. She has continued to use her knee brace and is presently not able to work. She wants to proceed with the total knee replacement surgery as recommended by Dr. Bradley.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is causally related to the accident of April 28, 2023.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related accident on April 28, 2023, when she sustained an injury to her right knee.

Petitioner has continued to experience significant right knee symptoms since the accident of April 28, 2023, up to and including the present.

Petitioner has osteoarthritis in both his right and left knees; however, Petitioner's significant knee symptoms have been limited to her right knee.

An MRI Petitioner's right knee was performed on December 18, 2023, which revealed pathology in Petitioner's right knee.

Dr. Bradley, Petitioner's primary treating physician, has opined that, as a result of the accident of April 28, 2023, Petitioner's right knee osteoarthritic condition was aggravated and Petitioner sustained a complete tear/extrusion of the medial meniscus.

Dr. Nogalski, Respondent's Section 12 examiner, opined Petitioner sustained a contusion to her right knee, but that Petitioner's right knee current condition is related to Petitioner's osteoarthritis and obesity. On cross-examination, he agreed that the mechanism of injury as described by Petitioner could have caused a right knee injury.

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

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

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills incurred therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

The Arbitrator concludes Petitioner is entitled to prospective medical treatment including, but not limited to, right total knee replacement surgery, as recommended by Dr. Matthew Bradley.

In support of this conclusion the Arbitrator notes the following:

Petitioner has received an extensive amount of conservative medical treatment including injections and physical therapy, but remains symptomatic. Petitioner's primary treating physician, Dr. Bradley, has recommended Petitioner undergo right total knee replacement surgery.

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

The Arbitrator concludes Petitioner is entitled to temporary total disability benefits of 32 2/7 weeks, commencing March 26, 2024, through November 7, 2024.

In support of this conclusion the Arbitrator notes the following:

Petitioner has not been able to work during the aforesated period of time because of her right knee condition.



William R. Gallagher, Arbitrator

December 23, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007024
Case Name	Gregory Newton Jr. v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0383
Number of Pages of Decision	19
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Thomas Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 9/15/2025

/s/Marc Parker, Commissioner

Signature

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.

September 15, 2025

MP:yl

o 9/11/25

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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	22WC007024
Case Name	Gregory Newton Jr. v. State of Illinois - Graham Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Linda Cantrell, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Joseph L. Moore

DATE FILED: 10/16/2024

/s/ Linda Cantrell, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 16, 2024 4.27%

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



October 16, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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.

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 3/7/22, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned \$78,988.00; the average weekly wage was \$1,519.00.

On the date of accident, Petitioner was 43 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 \$1,012.67/week for 5-6/7 weeks, commencing 4/20/22 through 5/30/22, 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 \$911.40/week for 79.125 weeks, because the injuries sustained caused permanent partial disability to the extent of 12.5% loss of use of the **right arm**, 12.5% loss of use of the **right hand** (190-level), and 12.5% 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 5/26/22 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.



Arbitrator Linda J. Cantrell

October 16, 2024

GREGORY NEWTON, JR.,)
)
Employee/Petitioner,)
)
v.) Case No.: 22-WC-007024
)
STATE OF ILLINOIS/GRAHAM)
CORRECTIONAL CENTER,)
)
Employer/Respondent.)

1

supervisor. His job duties required lifting, gripping, pushing, and pulling. As a Supply Supervisor II, Petitioner managed inventory of the warehouse, unloaded trucks, and moved inventory. As a Correctional Officer, he locked and unlocked doors, cuffed and uncuffed inmates, and moved property boxes.

Petitioner testified that when he worked as a Correctional Officer, he noticed numbness and tingling in his hands that woke him at night. He initially shook off his symptoms, but they progressed. Petitioner worked as a Correctional Officer at Graham Correctional Center at the time the COVID-19 pandemic began and was transferred to a Supply Supervisor after the pandemic started. Petitioner testified that his job duties substantially increased during the pandemic because the inmates were on lockdown. He stated that any involvement with the inmates required unlocking, opening, and locking cell doors and chuckholes, and cuffing inmates for any movement.

Petitioner testified that Graham was short staffed, particularly during the pandemic and overtime was mandated. His numbness, tingling, and pain increased during the pandemic due to his increased duties. Petitioner testified that he does not have diabetes, gout, hypothyroidism, rheumatoid arthritis, hypertension, or sleep apnea. He occasionally uses tobacco. Petitioner lifts weights to stay in shape. Petitioner underwent surgery on both hands and his right elbow by Dr. Bradley that improved his symptoms.

Petitioner still experiences occasional cramping in his hands and fingers, and he has some decreased grip strength. His injuries have affected his hobby of archery which he took up during the COVID pandemic. He has a lot of fatigue shooting an arrow. Petitioner volunteered at an animal shelter once a week prior to his injuries. He testified that he no longer volunteers due to cramping and fatigue when holding leashes. Petitioner has fatigue and cramping in his hands at the end of a work shift depending on the activities performed that day.

Petitioner testified that Major Trevor Wright was his direct supervisor as a Correctional Officer. Major Wright does not supervise him as a Supply Supervisor. Petitioner agreed that Respondent's job description of a Corrections Supply Supervisor I is similar to his job duties as a Supply Supervisor II.

On cross-examination, Petitioner testified that he has returned to work for Respondent without restrictions. He is no longer receiving medical treatment and does not take medication for his symptoms. He has not been prescribed braces to wear. Petitioner testified that he is physically able to perform his job duties satisfactorily. He earns more now than he did at the time of his injury. Petitioner denied any injuries to his right elbow and hands prior to the accident. Petitioner testified that he received benefit pay while he was off work for his injuries.

Petitioner testified that he first sought treatment for his injuries on 3/7/22 when he presented to Dr. Bradley. He did not treat with his primary care physician for his symptoms. Petitioner could not accurately state how many doors he locked and unlocked on a given workday because every day was different. He worked 7.5 hours per shift with a 30-minute lunch break. Petitioner started working as a Supply Supervisor around 2021. He initially worked in commissary where he used his hands constantly to grab and scan products purchased by inmates.

Petitioner testified that he will seek additional treatment if his symptoms persist. He testified that he still had swelling when he last treated with Dr. Bradley.

Major Trevor Wright testified at arbitration. Major Wright is a shift supervisor at Graham Correctional Center and supervised Petitioner for a short period of time. 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 instructed his staff to fill out reports until a broken key was fixed. 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 made the directive for the safety of the officers and inmates.

MEDICAL EVIDENCE

On 3/7/22, Petitioner was examined by Dr. Matthew Bradley at Metro East Orthopedics. (PX3) He complained of bilateral hand, wrist, and elbow pain over the past few years and his symptoms woke him at night. He reported that his whole hand goes numb, and he had no improvement with daily anti-inflammatory medication. Physical examination revealed a positive Phalen's test of the right elbow, and positive Tinel's and Phalen's testing of the bilateral wrists. X-rays were negative for fracture or dislocation. Dr. Bradley ordered EMG studies and prescribed home exercises.

On 3/7/22, Dr. Yadava performed the EMG/NCS that revealed bilateral carpal tunnel syndrome, right Guyon's canal syndrome, and right cubital tunnel syndrome. (PX4) On 3/14/22, Dr. Bradley reviewed the EMG/NCS studies and noted Petitioner continued to have symptoms mostly of bilateral carpal tunnel syndrome and mild cubital tunnel syndrome on the right. He recommended surgical intervention due to Petitioner's level of symptoms and the lack of improvement with conservative care. Petitioner was ordered to work full duty without restrictions until surgery.

On 3/16/22, Petitioner completed an Employee's Notice of Injury and reported pain and numbness in both hands due to continuous use of his hands and wrists while locking and unlocking cuffs, cell doors, and chuckholes. (RX1)

On 4/20/22, Dr. Bradley performed a right carpal and cubital tunnel release. (PX6) Intraoperative findings included a significant amount of scarring and adhesions posterior to the medial epicondyle of the elbow, a flattened appearance of the median nerve as it went into the carpal tunnel, and thickening of the transverse carpal ligament. No inter-tunnel cysts or masses were appreciated.

On 5/5/22, Petitioner followed up with Dr. Bradley and reported that his right upper extremity symptoms were improved overall, with some soreness over the incision. The symptoms in his left hand remained unchanged, with significant pain, numbness, and tingling over the left elbow, wrist, and hand. Dr. Bradley noted that Petitioner continued to have signs of significant left carpal and cubital tunnel syndrome for which he recommended surgical decompressions. Dr. Bradley recommended that Petitioner continue nonsteroidal anti-inflammatories, Tylenol, and home exercises for his right upper extremity. He released Petitioner

to light duty work with respect to his right upper extremity until he underwent left upper extremity surgery.

On 5/11/22, Dr. Bradley performed a left carpal tunnel release. (PX6) Intraoperative findings included a greatly thickened transverse carpal ligament that opened up greater than a centimeter upon complete release. The median nerve exhibited a flattened appearance with a moderate hourglass deformity as it passed through the carpal tunnel.

On 5/26/22, Petitioner followed up with Dr. Bradley and reported his symptoms mostly resolved, though he continued to have loss of grip strength. Dr. Bradley instructed Petitioner to continue using Tylenol and/or Ibuprofen and home exercises to improve strength and motion. Dr. Bradley placed Petitioner at MMI and released him to full duty work without restrictions effective 5/31/22.

Dr. Matthew Bradley testified by way of deposition on 10/13/23. (PX9) Dr. Bradley is a board-certified orthopedic surgeon. He testified that Petitioner did not have any nonoccupational conditions that would contribute to carpal or cubital tunnel syndrome. Physical examination of Petitioner's right elbow revealed tingling along the cubital tunnel nerve, and he was able to reproduce symptoms with a Tinel's test that were mild-to-moderate. Dr. Bradley testified that it was Petitioner's right upper extremity symptoms that were constant, severe, and waking him at night. Petitioner had positive Phalen's and Tinel's in both hands causing numbness and tingling over the carpal tunnel nerves. Physical examination of Petitioner's left elbow showed numbness and tingling of the cubital tunnel, but a negative Tinel's test. Dr. Bradley testified that he placed Petitioner off work following both upper extremity surgeries until follow up.

Dr. Bradley reviewed Petitioner's job description and work history and noted he did a significant amount of locking and unlocking of cell doors, chuckholes, and padlocks. Dr. Bradley testified that he has treated 40 to 50 correctional officers and is very familiar with their job duties. He has had an opportunity to review an independent job site analysis for correctional officers at Graham Correctional Center. Based upon his knowledge of the facility and Petitioner's job history, he opined that Petitioner's decades of performing repetitive job duties was a factor in the development of compression neuropathy. He noted that Petitioner's lack of risk factors buttressed his opinion. Dr. Bradley testified that since Petitioner's condition developed over a lengthy period of time, it was appropriate to consider more than just a brief period of his history contemporary with the onset of his symptoms.

Dr. Bradley testified that the size of the keys Petitioner used was not as important as the force needed to turn the key. He noted that Dr. Stewart's description of the doors and locks being easy to operate was inconsistent with the numerous reports he received from patients about the difficulty turning keys and opening doors. Dr. Bradley testified that many patients reported that sometimes they had to hit the keys with the palm of their hands and utilize their feet to push and pull on the doors. Dr. Bradley opined that the duties of an officer were repetitive and forceful enough to contribute to the development of compression neuropathy. He also opined that the medical treatment Petitioner received for his conditions was reasonable and necessary.

On cross examination, Dr. Bradley testified that it was a combination of all of Petitioner's job duties that caused his conditions. He testified that the repetitive locking and unlocking over 20+ years was probably the most contributing factor, including cell doors, padlocks, shower doors, and lockers. Dr. Bradley stated that for carpal tunnel syndrome it is the force that is required to open the doors that is most relevant.

Dr. Bradley did not specifically know if Petitioner used Folger Adams keys but stated he likely did over 20+ years of employment as a correctional officer and based on Dr. Bradley's treatment of 40 to 50 other officers. He did not know if Petitioner specifically did bar rapping. Dr. Bradley testified there would not be too much pressure using a bow and arrow on the wrist. He testified that if Petitioner was performing a significant amount of archery it may contribute to the development of carpal and cubital tunnel syndrome. He opined that the condition starts years before the development of symptoms which was prior to the time Petitioner took up archery.

On 7/7/22, Petitioner was examined by Dr. Patrick Stewart pursuant to Section 12 of the Act. (RX5) Dr. Stewart testified by way of deposition on 1/30/24. (RX6) He is a board-certified general surgeon with certifications in hand and upper extremities. Dr. Stewart testified that he was at a disadvantage because his examination was after Petitioner underwent surgery, but his physical examination showed Petitioner still had provocative maneuvers over the ulnar nerve at the right elbow and the median nerves of both wrists. His examination was consistent with bilateral carpal tunnel and cubital tunnel syndrome.

Dr. Stewart identifying occupational risk factors for compression neuropathy such as forceful repetition, prolonged extreme positioning, and forceful and prolonged grasping. He opined that Petitioner's conditions were not causally related to his work activities because the job duties of a correctional officer do not require any significant requisite force. He testified that Petitioner worked as a supervisor in the commissary for a year or so prior to treating where he scanned items and did not lift anything. He testified that the only comorbid condition Petitioner had was an elevated BMI which was due to him being muscular.

On cross-examination, Dr. Stewart testified that the job descriptions provided to him by Respondent were general descriptions and he did not observe any correctional officers perform their work duties. He admitted that he did not ask Petitioner any questions about keying because it was irrelevant as to activities that required force or holding the wrist in an odd position. He did not ask Petitioner if his job duties changed during the pandemic, the condition of the locks, the type of keys he used, or about bar rapping and shakedowns. Dr. Stewart testified that he visited Graham Correctional Center and opened 9 to 10 doors that were not difficult to open.

Dr. Stewart acknowledged that carpal and cubital tunnel syndromes are cumulative conditions that develop over time, but he considers only the patient's current job duties rather than their entire work history in formulating his causation opinion. He concluded that Petitioner's development of compression neuropathy was essentially "idiopathic". Dr. Stewart testified that he has never concluded that an officer's duties contributed to their compression neuropathy conditions.

Petitioner prepared a detailed job description and work history timeline. (PX7, 8) He indicated that as a correctional officer he worked in segregation for 3.5 years. His duties in segregation required locking and unlocking doors and chuckholes on 100 cells per day. He cuffed and uncuffed 100 inmates for showers and yard time daily. Petitioner indicated that for 21 years he locked and unlocked cell doors, chuckholes, and padlocks approximately 600 to 1,000 times per day. As a Supply Supervisor he lifts baskets of commissary of varying weights throughout the workday. He pushes and pulls supplies and reaches overhead to grab supplies from shelving. He also grasps and scans commissary items throughout the day and uses finger dexterity to type on a computer.

Respondent submitted a CMS-104 Position Description for a Corrections Supply Supervisor I. (RX3) Petitioner acknowledged that the duties of a Supply Supervisor I were similar to his duties as a Supply Supervisor II. The position description indicates that Petitioner spends 30% of his time maintaining store merchandise, which includes keeping proper rotation and accountability of all store items, unloading deliveries, issuing merchandise, receiving and inspecting boxes and containers of equipment, supplies, and commodities weighing up to 50 pounds, and pricing items. It indicated that Petitioner spends 25% of his time keeping records for a clear audit trail for the flow of all equipment and commodities through the receiving, distribution, and reassignment process. This involves preparing reports for receiving, issuance, and transfer of all items that come into the supply store, inputting these reports into the automated accounting system, and forwarding these receiving reports to the Business Office. It indicated that 20% of his time is allotted to monitoring and coordinating the work assignments of individuals in custody and reporting infractions, 15% to monitoring storage and distribution of caustic or toxic substances for safety compliance and preparing reports on violations, and 10% to copying and general clerical or other duties reasonably within the scope of other tasks.

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 Correctional Officer and Supply Supervisor II. He was a Correctional Officer for 23 years and has spent the last 3 years as a Supply Supervisor II. Petitioner testified that he worked exclusively in segregation for 3.5 years. His job duties in segregation required locking and unlocking doors and chuckholes on 100 cells per day. He cuffed and uncuffed 100 inmates for showers and yard time daily. Petitioner testified that as a correctional officer he locked and unlocked cell doors, chuckholes, and padlocks approximately 600 to 1,000 times per day.

Petitioner testified that Graham was short staffed, particularly during the pandemic and overtime was mandated. He testified that during the COVID pandemic his job duties increased because the officers had to perform the tasks that inmates normally performed. His numbness, tingling, and pain increased during the pandemic due to his increased duties.

Major Wright testified that he was Petitioner’s direct supervisor for a short period of time. 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 instructed his staff to fill out reports when a key was broken until it was fixed. He instructed his staff to submit the reports because they were having issues getting the keys fixed and he wanted it documented that they were not getting fixed in a timely manner.

The Arbitrator finds the opinions of Dr. Bradley more credible than those of Dr. Stewart. Dr. Stewart testified that he did not believe Petitioner’s duties required any force or difficulty whatsoever. Major Wright testified that there was a problem with the locks in the facility and they were not being fixed in a timely manner. Major Wright instructed his staff to complete multiple reports until the keys were fixed. Dr. Stewart testified that he did not bother asking Petitioner if he had difficulty keying locks because it was irrelevant as to activities that required force or holding the wrist in an odd position. He did not ask Petitioner if his job duties changed

during the pandemic, the condition of the locks, the type of keys he used, or about bar rapping and shakedowns.

Dr. Stewart agreed that carpal and cubital tunnel syndrome are cumulative, multifactorial conditions. However, he testified that Petitioner's 26-year work history as an officer 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 did not have any nonoccupational risk factors that would contribute to the development of carpal or cubital tunnel syndrome, which buttressed his opinion that Petitioner's 26-year work history as a correctional officer caused his conditions. Dr. Stewart testified that the only comorbid condition Petitioner had was an elevated BMI which was due to him being muscular.

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 was at a disadvantage because his examination was after Petitioner underwent surgery. Dr. Bradley opined that Petitioner's treatment was reasonable and necessary. 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.

Dr. Bradley performed a right carpal and cubital tunnel release on 4/20/22 and placed Petitioner off work. On 5/5/22, Dr. Bradley allowed Petitioner to return to light duty work until his left carpal tunnel release, which was performed on 5/11/22. There is no evidence that Petitioner returned to work in a light duty capacity prior to his left carpal tunnel release. On 5/26/22, Dr. Bradley placed Petitioner at MMI and released him to return to work without restrictions on 5/31/22.

Therefore, Respondent shall pay Petitioner temporary total disability benefits of **\$1,012.67/week** for **5-6/7** weeks, commencing **4/20/22** through **5/30/22**, 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 Supply Supervisor II. He was released to full duty work without restrictions effective 5/31/22 and testified that he is able to physically perform his job duties satisfactorily. The Arbitrator places some weight on this factor.
- (iii) **Age:** Petitioner was 43 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 more now than 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 tunnel releases and a right cubital tunnel release. Dr. Bradley noted Petitioner's pre-surgical symptoms mostly resolved, though he continued to report loss of grip strength. Dr. Bradley instructed Petitioner to continue using Tylenol and/or Ibuprofen and perform home exercises to improve strength and motion. Petitioner was released to full duty work without restrictions effective 5/31/22.

Petitioner testified that he still experiences occasional cramping in his hands and fingers and some decreased grip strength. His injuries have affected his hobbies of archery and volunteering at an animal shelter. He has fatigue and cramping in his hands that is activity driven. Petitioner testified that he is physically able to perform his job duties satisfactorily. He does not take medication or wear braces for his symptoms. 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 12.5% loss of use of the right arm, 12.5% loss of use of the right hand (190-level), and 12.5% 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 5/26/22 through 8/29/24, and shall pay the remainder of the award, if any, in weekly payments.



Arbitrator Linda J. Cantrell

October 16, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC008721
Case Name	David Townsend v. State of Illinois - Warren G. Murray Developmental Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0384
Number of Pages of Decision	11
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Rodney Thompson
Respondent Attorney	Kenton Owens

DATE FILED: 9/15/2025

/s/Marc Parker, 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

David Townsend,

Petitioner,

vs.

NO: 23 WC 008721

State of Illinois/Murray
 Developmental Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, 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 November 22, 2024, is hereby affirmed and adopted.

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

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

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

September 15, 2025

MP:yl

o 9/11/25

68

/s/ *Marc Parker*

Marc Parker

/s/ *Maria E. Portela*

Maria E. Portela

/s/ *Christopher A. Harris*

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC008721
Case Name	David Townsend v. State of Illinois - Warren G. Murray Developmental Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Rodney Thompson
Respondent Attorney	Kenton Owens

DATE FILED: 11/22/2024

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



November 22, 2024

/s/ William Gallagher, Arbitrator
Signature

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF NOVEMBER 19 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

Davd Townsend
 Employee/Petitioner

Case # 23 WC 08721

v.

Consolidated cases: n/a

State of Illinois/Murray Developmental 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 William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, 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 February 6, 2021, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$83,720.00; the average weekly wage was \$1,610.00.

On the date of accident, Petitioner was 53 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

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

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$871.73 per week for 36.375 weeks because the injury sustained caused the 25% loss of use of the right index finger and 12 1/2 % loss of use of the right hand, as provided in Section 8(e) of the Act.

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

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


 William R. Gallagher, Arbitrator

ICArbDec p. 2

NOVEMBER 22 2024

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment by Respondent on February 6, 2021. According to the Application, "Petitioner was measuring wood for a replacement on coal conveyor" and sustained an injury to his "Right index and middle fingers, right hand and right upper extremity" (Arbitrator's Exhibit 2). There was no dispute that Petitioner sustained a work-related accident on February 6, 2021, and it was stipulated that all medical bills and temporary total disability benefits had been paid. Respondent disputed liability on the basis of causal relationship in respect to Petitioner's right carpal tunnel syndrome condition (Arbitrator's Exhibit 1).

On February 6, 2021, Petitioner worked for Respondent as an Ashman Maintenance. At trial, Petitioner testified he was then working for Respondent as a Maintenance Ashman. Petitioner stated that working as a Maintenance Ashman was a better job because his job duties emphasized maintenance of equipment and less duties as an Ashman Maintenance.

The Petitioner testified that his current job duties consist of repairing, cleaning and caring for the boiler house. Petitioner checks the buildings for water quality, checks the heating/cooling equipment, maintain the coal fire equipment and pull ash. Petitioner stated that pulling ash requires him to remove ash from the boilers. Petitioner testified that his job duties are physically demanding. Petitioner also stated he is right hand dominant.

On February 6, 2021, Petitioner was taking measurements of a piece of plywood that was being used as a shield for coal which might drop off a conveyor. The piece of plywood had deteriorated and needed to be replaced with metal. As Petitioner was in the process of measuring the plywood, he hit his right hand on the plywood which caused a splinter to go underneath the fingernail of his right index finger. At that time, Petitioner experienced a significant amount of pain and observed that the splinter ran almost to the bottom of the cuticle of his right index finger.

Petitioner did not seek any medical treatment on the day of the accident, but he attempted to remove the splinter himself. The next morning, Petitioner experienced significant pain and advised Respondent, who directed him to go to the nurse at the facility. She could not help Petitioner and directed him to go to the Express Clinic in Centralia.

Petitioner was seen at the Express Clinic on February 6, 2021. At that time, Petitioner received some injections into his hand and an attempt was made to remove the splinter. Petitioner testified the splinter came out in fragments. According to the medical record, three separate pieces of the splinter were removed (Petitioner's Exhibit 1).

Petitioner continued to experience pain/swelling in his right index finger as well as swelling in his right hand. He sought treatment from Dr. Patrick Stewart, a hand surgeon.

Dr. Stewart evaluated Petitioner on February 10, 2021. At that time, Petitioner complained of pain/throbbing in his right index finger. Dr. Stewart diagnosed Petitioner with splinter

hemorrhages beneath the nail plate. He recommended Petitioner undergo surgery consisting of removal of the nail plate with debridement (Petitioner's Exhibit 2).

On February 10, 2021, Dr. Stewart performed surgery on Petitioner's right index finger. The procedure consisted of removal of the nail plate, drainage of an abscess, and placement of vessel loop drains (Petitioner's Exhibit 4).

Petitioner was seen by Dr. Stewart on February 15, 2021. At that time, Petitioner complained of numbness/tingling in his right hand which included the thumb, as well as the index, middle and ring fingers. Dr. Stewart diagnosed Petitioner with carpal tunnel syndrome and opined the swelling had "...caused him to develop or aggravate the underlying carpal tunnel syndrome." (Petitioner's Exhibit 2).

Petitioner continued to experience right index finger and right carpal tunnel syndrome symptoms and remained under Dr. Stewart's care. Dr. Stewart saw Petitioner periodically in February, March, and April, 2021. When seen on April 21, 2021, Dr. Stewart recommended Petitioner undergo EMG/nerve conduction studies on the right hand (Petitioner's Exhibit 2).

On May 14, 2021, EMG/nerve conduction studies were performed. They were positive for mild/moderate median neuropathy consistent with right carpal tunnel syndrome (Petitioner's Exhibit 2).

Dr. Stewart saw Petitioner on May 26, 2021, and reviewed the EMG/nerve conduction studies. He agreed they were positive for carpal tunnel syndrome. Dr. Stewart recommended Petitioner undergo an injection into the right carpal tunnel which he administered that day (Petitioner's Exhibit 2).

When Dr. Stewart saw Petitioner on June 16, 2021, he noted Petitioner's right index finger condition had improved; however, Petitioner continued to have carpal tunnel syndrome complaints. At that time, Dr. Stewart opined surgery was appropriate and recommended Petitioner undergo a carpal tunnel release as well as release of the digital nerves of the index and middle fingers (Petitioner's Exhibit 2).

The surgery was delayed because Petitioner's blood work was not compatible with his undergoing a surgical procedure. When Petitioner's blood work had an acceptable result, Dr. Stewart proceeded with the surgery on December 1, 2021. The surgical procedure consisted of excision of scar tissue of the radial digital nerve of the right index finger, exploration of the radial digital nerve of the right middle finger, digital neuroplasty of the ulnar digital nerve of the right index finger, excision of a ganglion of the ulnar digital nerve of the right index finger, and application of a short arm cast (Petitioner's Exhibit 4).

Following surgery, Petitioner continued to be treated by Dr. Stewart. Petitioner was seen by Dr. Stewart on several occasions between December, 2021, and April, 2022. During December, 2021, Dr. Stewart continued Petitioner on antibiotic medications and ordered physical therapy. When Dr. Stewart evaluated Petitioner on April 6, 2022, Petitioner had returned to work, but continued

to experience right index and right hand symptoms, although not as significant as they were prior to surgery (Petitioner's Exhibit 2).

At the direction of Respondent, Petitioner was examined by Dr. Robert Hagan, a plastic surgeon, on April 18, 2022. In connection with his examination of Petitioner, Dr. Hagan reviewed medical records provided to him by Respondent. At that time, Petitioner complained of persistent numbness in the right index finger and right hand as well as right hand pain. In regard to his pain symptoms, Petitioner rated them as 3-4/10 to 7-8/10, for which he took over-the-counter medication (Respondent's Exhibit 2).

On examination, Dr. Hagan noted diminished sensation of the right index and middle fingers, and an inconsistent/mild positive Tinel's over the surgical incision of the right palm which radiated into the index and middle fingers. Dr. Hagan opined Petitioner had a history of right index finger infection and digital neuritis and that Petitioner had received appropriate medical care (Respondent's Exhibit 2).

Petitioner saw Dr. Stewart for the last time on October 7, 2022. Petitioner continued to experience numbness in his right index finger, but the right middle finger symptoms had resolved. Petitioner still experienced tenderness in the palm of his right hand. Dr. Stewart opined Petitioner might need further surgery if the symptoms worsened, but he discharged Petitioner from care at that time (Petitioner's Exhibit 2).

At trial, Petitioner testified he experienced a diminished sensation in his right hand and would drop small objects such as nuts, bolts, and paper clips because he could not feel how much grip strength was being applied. He complained of numbness/tingling going from the tip of his right index finger to the back of his hand. Petitioner stated his grip strength had decreased and he had difficulties using his right index finger to apply pressure on objects.

Petitioner no longer takes medication and he did return to work to his regular job. He presently earns more income now than what he earned at the time of the accident.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being is causally related to the accident of February 6, 2021.

In support of this conclusion the Arbitrator notes the following:

There was no dispute Petitioner sustained a work-related injury to his right index finger on February 6, 2021, and the dispute regarding causality was limited to the right carpal tunnel syndrome condition.

Dr. Stewart, Petitioner's primary treating physician, diagnosed Petitioner with right carpal tunnel syndrome when he examined him on February 15, 2021, five days after he performed surgery on Petitioner's right index finger. At that time, Dr. Stewart opined the swelling Petitioner experienced following surgery had caused Petitioner to develop or aggravate the underlying carpal tunnel syndrome condition.

Respondent's Section 12 examiner, Dr. Hagan, did not opine as to whether Petitioner had carpal tunnel syndrome, but opined Petitioner had digital neuritis. Accordingly, Dr. Hagan did not opine as to causality of the carpal tunnel syndrome condition.

There was no evidence of Petitioner having symptoms consistent with carpal tunnel syndrome prior to the accident of February 6, 2021.

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

The Arbitrator concludes Petitioner has sustained permanent partial disability to the extent of 25% loss of use of the right index finger and 12 1/2% loss of use of the right hand.

In support of this conclusion the Arbitrator notes following:

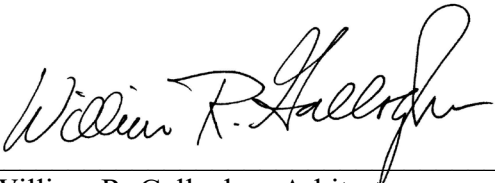
Neither Petitioner nor Respondent tendered an AMA impairment rating. The Arbitrator gives this factor no weight.

Petitioner's occupation at the time of the accident was an Ashman Maintenance. At the time of trial, Petitioner's occupation was a Maintenance Ashman. Both occupations were physically demanding and required the extensive use of his right hand. The Arbitrator gives this factor significant weight.

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

There was no evidence the injury had any effect of Petitioner's future earning capacity. Petitioner was able to return to work to his regular job and presently earns more income than what he did at the time he sustained the accident. The Arbitrator gives this factor moderate weight.

Petitioner sustained an injury to his right index finger which required surgery and an extensive amount of medical treatment thereafter. Because of the swelling which Petitioner experienced following surgery, he was diagnosed with carpal tunnel syndrome and a second surgery was performed. The second surgery was not a carpal tunnel release, but was surgery on the digital nerves of the right hand. Petitioner continues to have complaints in respect to his right index finger and right hand corroborated by the medical records which are consistent with the injury he sustained. The Arbitrator gives this factor significant weight.



William R. Gallagher, Arbitrator

NOVEMBER 22 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC025226
Case Name	Kevin Thien v. Hamilton County Coal
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0385
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	James Keefe, Jr., Ron Coffel
Respondent Attorney	Pieter Schmidt

DATE FILED: 9/16/2025

/s/Maria Portela, Commissioner

Signature

20 WC 25226

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

KEVIN THEIN,

Petitioner,

vs.

NO: 20 WC 25226

HAMILTON COUNTY COAL,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 21, 2024, is hereby affirmed and adopted.

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

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

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

20 WC 25226

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$34,241.00. 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.

September 16, 2025/s/ Maria E. Portela

Maria E. Portela

MEP/dmm

/s/ Marc Parker

Marc Parker

O: 91125

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/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	20WC025226
Case Name	Kevin Thien v. Hamilton County Coal
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	James Keefe Jr, Ron Coffel
Respondent Attorney	Kevin L Mechler, D Brian Smith

DATE FILED: 10/21/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF OCTOBER 16, 2024 4.27%

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)

Kevin Thien
 Employee/Petitioner

Case # **20** WC **25226**

v.

Consolidated cases: _____

Hamilton County Coal
 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 **9/5/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ 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, **8/31/20**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$82,260.20**; the average weekly wage was **\$1,582.10**.

On the date of accident, Petitioner was **39** years of age, *single* with **1** dependent child.

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

Respondent shall be given a credit of **\$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 reasonable and necessary medical services as listed in Petitioner's Exhibit 6, as provided in Section 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, specifically three-level disc replacement 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.

Jeanne L. AuBuchon

Signature of Arbitrator

October 21, 2024

PROCEDURAL HISTORY

This matter proceeded to trial on September 5, 2024, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's cervical spine condition; 2) payment of medical bills; and 3) entitlement to prospective medical care.

This case was previously tried on February 17, 2022, pursuant to Sections 19(b) and 8(a) of the Act. (PX1) On May 4, 2022, the Arbitrator issued a decision finding that a accident occurred that arose out of and in the course of the Petitioner's employment by the Respondent, finding that the Petitioner's current condition of ill-being was causally related to the injury and awarding medical expenses, TTD and prospective medical care, including a three-level cervical disc replacement. (Id.) On September 11, 2023, the Commission affirmed the Arbitrator's decision except for the surgery award. (Id.) The Commission found that the Petitioner had not sustained his burden of proof showing that the disc replacements were reasonable and necessary at that time, as the Petitioner was working full unrestricted duty, conservative treatment had not yet been exhausted, and obtaining an updated MRI would allow the doctor to make further treatment recommendations. (Id.) The Commission awarded prospective conservative treatment i.e. physical therapy and potentially injections to the cervical levels that the Petitioner may need depending upon the MRI findings. (Id.)

FINDINGS OF FACT

At the time of the accident, the Petitioner was 39 years old and employed by the Respondent as a belt mechanic performing heavy labor working 12-hour days moving structure that weighed 150-200 pounds, putting in belts, using come-alongs, running equipment and shoveling coal. (PX1) On August 31, 2020, the Petitioner felt a pop in his right shoulder while

lifting steel. (Id.) Although he had right shoulder pain, headaches and neck pain prior to the work accident, those symptoms worsened after the accident, and he could not lift with his right arm and had pain radiating down his right arm. (Id.) The Petitioner underwent right shoulder surgery on November 3, 2020, that did not improve the numbness and tingling in his right arm. (Id.)

On November 19, 2020, the Petitioner began treating with Dr. Matthew Gornet, an orthopedic spine surgeon at The Orthopedic Center of St. Louis, for his cervical issue. (Id.) He underwent an MRI that Dr. Gornet said showed a low-level herniation at C3-4 right, some pathology at C3-4, C4-5 and C5-6 and some foraminal narrowing at C5-6 right. (Id.) He recommended an epidural injection at C5-6. (Id.) After the radiologist who performed the MRI informed Dr. Gornet that there was a potentially extruded fragment at C6-7 that he did not put in his report, Dr. Gornet recommended an injection at C6-7. (Id.) The injection at C5-6 was performed on December 8, 2020, and the injection at C6-7 was performed on December 22, 2022, after reported benefit from the first injection. (Id.)

The Petitioner contacted Dr. Gornet's office on January 7, 2021, and reported that he had found a job he felt he could perform as a heavy equipment operator. (Id.) Dr. Gornet released the Petitioner to work full duty with no restrictions beginning January 11, 2021, in large part based on the Petitioner's response to the injections. (Id.) At follow-up visits, Dr. Gornet discussed a three-level disc replacement if the Petitioner's symptoms continued and recommended a repeat MRI for a more critical look. (Id.)

Section 12 examiner Dr. Andrew Zelby, a neurosurgeon at Northshore Neurological Surgery & Spine Surgery, opposed a three-level disc replacement and said the Petitioner's subjective findings seemed like an exaggeration. (Id.) Dr. Zelby diagnosed mild cervical spondylosis without myelopathy or radiculopathy and recommended a diligent self-directed home

exercise program on a daily basis both as a mainstay for long-term control of his symptoms and for general health of his spine. (Id.) He also recommended smoking cessation.

In its decision, the Commission found evidence that the Petitioner received some short-term benefit from the cervical injections, which supported Dr. Gornet's opinions of the objective findings on the MRI. (Id.) The Commission pointed out that the injections were only provided at the C5-6 and C6-7 levels, and there were no injections at the C3-4 and C4-5 levels to confirm if those levels were contributory pain generators or if the Petitioner might get additional relief from his symptoms. (Id.) The Commission further found that Dr. Zelby's opinion regarding a home exercise program and smoking cessation had merit. (Id.) The Commission noted that the Petitioner had no physical therapy to address his cervical condition and found that physical therapy could be potentially cost and medically effective especially in light of Dr. Zelby's recommendation for a home exercise program. (Id.)

Following the Commission's decision, the Petitioner returned to Dr. Gornet. (PX3) On August 17, 2023, he identified the Petitioner's main issue to be axial neck pain with frequent headaches, right trapezius, right shoulder and right arm symptoms, as well as right-sided weakness. (Id.) Due to the longstanding delay in treatment, he recommended new MRI and CT scans. (Id.) He dispensed a non-steroidal anti-inflammatory and a muscle relaxant. (Id.)

The MRI and CT scans were performed on October 30, 2023, by Dr. Matthew Ruyle, a radiologist at MRI Partners of Chesterfield and CT Partners of Chesterfield. (PX4) On the MRI, Dr. Ruyle found: 1) central annular tears/fissures and protrusions at C5-6 and C6-7 extending into both foramen at C5-6 and into the left foramen at C6-7, resulting in mild foraminal stenosis at both levels but no central canal stenosis; 2) C3-4 bilateral foraminal protrusions resulting in mild to moderate left greater than right foraminal stenosis but no central anal stenosis; and 3)

circumferential disc bulge at C4-5 resulting in mild bilateral foraminal stenosis but no central canal stenosis. (Id.) On the CT scan, Dr. Ruyle found: 1) limited visibility at and below C5-6 due to noise artifact from the shoulders and 2) no definite disc bulge or protrusion or facet arthropathy. (Id.)

The Petitioner also saw Dr. Gornet that day. (PX3) Dr. Gornet read the MRI as showing structural disc pathology more on the right side at C3-4, C4-5 and C5-6 and structural tears in the discs at C4-5 and C5-6 with no major herniations present. (Id.) Dr. Gornet said the Petitioner did not have spinal cord compression. (Id.) He said the CT scan did not reveal any significant bony elements at issue, no major facet arthropathy and no evidence of major foraminal stenosis. (Id.) He recommended physical therapy, an epidural steroid injection at C5-6 and medial nerve branch blocks (MNBB) and radiofrequency ablations (RFAs) on the right side at C3-4, C4-5 and C5-6. (Id.) He said if the Petitioner did not improve, his best option would be cervical disc replacement at C3-4, C4-5 and C5-6. (Id.) He dispensed medications and allowed the Petitioner to work as before. (Id.)

The Petitioner testified that he did not undergo formal physical therapy for his neck, stating that when he had physical therapy after his shoulder surgery, he was instructed to keep stretching his neck. (T. 23) He said he performs those stretches five or six-plus times a day. (T. 23-24)

Pain management specialist Dr. Helen Blake saw the Petitioner on November 13, 2023, and noted structural disc changes on the MRI, most profound at C3-4, C4-5 and C5-6 and most substantially on the right. (PX5.) The Petitioner described neck pain with associated numbness and tingling radiating from the neck that he classified as 7/10 on a pain scale. (Id.) He had some radiation into his deltoid and trapezial musculature on the right greater on the right than the left. (Id.) Dr. Blake performed a C4-5 right paramedian interlaminar epidural steroid injection. (Id.)

After the procedure, the Petitioner reported 6/10 pain. (Id.) The Petitioner testified that he had about an hour relief of his headaches. (T. 14)

On November 29, 2023, Dr. Blake performed a right C5-6 interlaminar epidural steroid injection. (PX5) After the procedure, the Petitioner reported 8/10 pain. (Id.) The Petitioner testified that he had no benefit from that injection. (T. 16) Dr. Blake then performed a right C3-4, C4-5 facet MNBB on December 12, 2023. (Id.) Post-procedure pain scores were 3-4/10. (Id.) The Petitioner testified that he felt about an hour of relief from his headaches and his skin was numb. (T. 17)

The Petitioner returned to Dr. Blake on December 18, 2023, and reported that after the MNBB, he had relief of his headache but after conclusion of the duration of action of the local anesthetic, he had an abrupt return of his headache and decreased range of motion of his neck. (PX5) He still had radiating arm pain. (Id.) Dr. Blake advised the Petitioner that it was likely that the persistent pain was from the effects of the damaged discs and not as much as from the facets. (Id.) She stated that with the improvement in the Petitioner's headaches after the MNBB, he would likely benefit from more definitive treatment with RFA. (Id.) She felt that the Petitioner had a component of axial neck pain that was facet mediated, and she would aim to eliminate that portion of the pain for six months to one year with RAF to the right C3-4 and C4-5 facet joint area. (Id.) Dr. Blake performed the RFA on January 2, 2024. (Id.) There were no follow up notes from Dr. Blake. (Id.) The Petitioner testified that this injection gave him more numbness of the skin but the tingling and pain in his arm and neck were still there. (T. 18)

On February 1, 2024, the Petitioner returned to Dr. Gornet, who stated that none of the recommended conservative treatment provided any sustained relief. (PX3) He noted that the Petitioner was working full duty as a welder and his main symptoms were neck pain to the right

side, right trapezius, right shoulder and right arm. (Id.) Dr. Gornet stated that the Petitioner was fairly miserable and wanted something done. (Id.) Dr. Gornet wrote: "I do believe I can help him. Again, our belief is that he has had disc pathology predominantly at 3-4, 4-5 and 5-6 and we have recommended three level cervical disc replacement." (Id.) He allowed the Petitioner to continue working full duty until treatment is approved. (Id.)

Dr. Zelby performed another Section 12 examination on April 3, 2024. (RX2) The Petitioner reported that he still had constant neck pain in the back and right side of the neck radiating up to the top of the head and down the entire right upper extremity into the entire hand and all five fingers. (Id.) The Petitioner said there also was constant numbness and tingling along the entire right side of the neck extending down to the right shoulder and through the entire right upper extremity. (Id.) He said his headaches came and went throughout the day. (Id.) The Petitioner reported that none of the injections helped with the pain at all, and the only thing he notices was numbness in the skin where the needles were stuck into the neck. (Id.) He had not done any physical therapy and said since he had no help with the injections, he was sure he would get no benefit from physical therapy. (Id.)

Dr. Zelby performed a neurological examination. (Id.) The cervical spine appeared normal except for tenderness to palpation in the right cervical paraspinal muscles. (Id.) Although range of motion appeared diminished, including 20 degrees of lateral rotation to the right and left, Dr. Zelby noted that the Petitioner demonstrated at least 60 degrees of lateral rotation when giving his current history and when he turned his neck to look for and retrieve his phone. (Id.) Thoracic and motor exams were normal. (Id.) The sensory exam was normal except for diminished sensation to pin and vibratory sensation in the right upper extremity. (Id.) Deep tendon reflexes in the upper and lower extremities were mildly diminished and symmetric throughout and there were no

pathologic reflexes. (Id.) Arm circumferences were symmetric and without atrophy. (Id.) Inconsistent Waddell's findings were positive for pain on simulation and non-anatomic sensory findings. (Id.)

Dr. Zelby reviewed the October 30, 2023, MRI and CT scan. (Id.) On the CT scan, he noted: disc space heights were maintained throughout the cervical spine; there was osteophyte (bone spur) formation at C4-5 and C5-6 more than C3-4; at C2-3 there was a miniscule broad-based and right disc/osteophyte complex and uncovertebral joint hypertrophy with a modest degree of foraminal stenosis; at C4-5, there was a broad based disc/osteophyte complex and right more than left uncovertebral joint hypertrophy and at least modest right foraminal stenosis; at C5-6 there was a broad-based disc/osteophyte complex a little more prominent to the right and mild uncovertebral joint hypertrophy with a modest degree of foraminal stenosis; and at C6-7 there was mild artifact but appeared to be a broad-based disc/osteophyte complex and uncovertebral joint hypertrophy with a modest degree of foraminal stenosis. (Id.)

On the MRI, Dr. Zelby's findings were similar to those on the CT scan, with the addition of: mild degenerative disc disease at C4-5 and C5-6 greater than C3-4; ventral cerebrospinal fluid (CSF) at C3-4 and C4-5; and small chronic partial-thickness annular tears at C5-6 and C6-7. (Id.)

Dr. Zelby also reviewed medical records from Dr. Gornet and Dr. Blake. (Id.) He again considered and rendered opinions as to treatment notes from visits that occurred prior to the arbitration hearing in 2022, including a finding by Dr. Gornet that the MRI revealed subtle structural disc pathology. (Id.) As to the new records, he pointed that after the MNBB and RFA, Dr. Gornet stated that the Petitioner did not have any sustained relief but did not characterize any degree or duration of relief with those treatments. (Id.)

Dr. Zelby again diagnosed mild cervical degenerative spondylosis without myelopathy or radiculopathy. (Id.) As in his previous report, Dr. Zelby pointed out that the Petitioner demonstrated a diminution in cervical range of motion on exam but was able to demonstrate better range of motion when not specifically being examined. (Id.) He said the Petitioner also had a completely normal neurologic exam except for a report of diminished sensation in the right upper extremity that was inconsistent with any spinal or neurologic condition. (Id.) He said the Petitioner reporting no relief with any of the injections seemed inconsistent with the records. (Id.) He acknowledged that the Petitioner had chronic partial-thickness annular tears, but they were not a source for ongoing complaints because over 3-4 months, fibroblasts are laid down and the annular tears heal. (Id.) He said that while the tears remain visible on an MRI – like a scar or laceration on the skin – they become clinically irrelevant. (Id.) He stated that such tears were not indication for further treatment without additional and significant findings and symptoms that correlate with those findings. (Id.) He said the Petitioner’s reported persistence and severity of his symptoms remained inconsistent with his objective medical findings, and there was no medical basis to suggest these complaints were caused, contributed to or more likely to be present because of the work accident. (Id.)

As to Dr. Gornet’s surgical recommendation, Dr. Zelby stated it was unclear why Dr. Gornet would believe a mechanical prosthesis would be an improvement for the Petitioner compared to his native discs. (Id.) He said the subtle findings Dr. Gornet believed were present on one sequence of the Petitioner’s entire cervical MRI scan was not an indication to suggest or pursue surgery. (Id.) He said Dr. Gornet also was misleading in his description when he suggested the annular tears were to the right, because a review of the films and the radiologist’s report indicated the tears were central in location. (Id.) He added that the Petitioner’s failure to find any

improvement with multiple injections also was a fairly good indication that there was no more intervention that had a reasonable expectation to provide meaningful or sustained relief. (Id.)

Dr. Zelby again recommended smoking cessation and a home exercise program. (Id.) He said the Petitioner had reached maximum medical improvement and required no additional diagnostic studies, treatment or prescription medications for any infirmity in his spine and nervous system related to the work injury. (Id.) He said the Petitioner was medically capable of the pursuit of his usual vocation and avocational activities without restrictions. (Id.)

Dr. Gornet testified consistently with his records at a deposition on August 8, 2024. (PX2) He said that given that conservative treatment failed, he felt that the Petitioner's only other option was surgery. (Id.) As to physical therapy, Dr. Gornet said it would not do a lot to help the disc problems. (Id.) He said that because the Petitioner was working full duty and not deconditioned, he did not anticipate physical therapy would help. (Id.) He thought that at this point, there is a chance that he is going to not be able to continue with gainful employment at his level if he does not have something done. (Id.) He said that without some change in causal connection such as a new slip/fall or other trauma, he still believed the Petitioner's symptoms related to his work injuries of August 31, 2020. (Id.) He opined that the proposed surgery is medically reasonable and necessary to cure and relieve the Petitioner's current cervical condition. (Id.) He said that with the surgery and a recovery period of three to six months, the Petitioner could return to a full-duty job as a heavy laborer. (Id.)

Dr. Gornet agreed with Dr. Zelby that there was no neurologic issue. (Id.) He said the Petitioner had a mechanism of injury that can produce a disc injury and objective studies that show changes on the side that he believed correlated with that. (Id.) He pointed to long-term literature and studies in support of his findings. (Id.)

Dr. Zelby testified consistently with his report at a deposition on August 20, 2024. (RX1) He explained that the Waddell test findings suggested that the Petitioner was complaining of pain with a stimulus that wouldn't elicit pain. (Id.) He said that at his examination, the Petitioner had only had two out of five Waddell signs, which is not considered to be statistically significant. (Id.)

Dr. Zelby discussed medical records and findings that occurred prior to the 2022 arbitration. (Id.)

The Petitioner testified that since the prior hearing, he has been experiencing tingling and numbness in his right arm from his shoulder to the tips of his fingers, constant headaches and neck pain that have never resolved. (T. 12) He denied having any new injuries or accidents involving his neck since the prior hearing. (T. 12-13) He said he takes four to six Ibuprofen every six hours and does not take the medication prescribed by Dr. Gornet because it makes him sick. (T. 24)

The Petitioner said that he resigned from the job he had at the time of the prior arbitration, then worked at Weiland, an ammunition manufacturer, running a remote-controlled crane, but quit because of childcare issues. (T. 20) He then went to work for New Frontier, a rock mine, where he was supposed to run equipment. (T. 21) He said they had him shoveling, and he couldn't handle it. (Id.) At the time of arbitration, he was working for GMS Mining Services running a haul truck. (T. 21-22) He said his work in these jobs is different than working for the Respondent because the coal mine was straight physical labor – always moving up and down, crawling in tight places, throwing structure. (T. 23)

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?

On May 4, 2022, the prior Arbitrator found that the Petitioner's cervical spine condition was causally related to the work accident. This part of the decision was affirmed by the Commission. The finding of causation is now the law of the case. To revisit this issue, this Arbitrator must determine whether the Petitioner's condition has changed such that there no longer is a causal connection with the accident.

Aside from the Petitioner receiving additional treatment in the form of an epidural injection, MNBBs and an RFA, there have been no substantial changes. The Petitioner still suffers the same head, neck and arm symptoms. He is still working, as he was at the time of the prior decision. There was no evidence of any intervening incidents or injuries to break the causal chain.

Dr. Zelby's opinions did not change either. As part of the basis of his latest report, he cited records from the Petitioner's visits to Dr. Gornet that occurred prior to the last arbitration hearing and were considered by the Arbitrator and Commission in their decisions. This Arbitrator finds that the Arbitrator's and Commission's findings regarding that evidence – including Dr. Zelby's findings – are part of the law of the case and do not bear on the inquiry as to the Petitioner's "current" condition.

Although Dr. Zelby found the Petitioner to be exaggerating his symptoms, the Arbitrator finds the Petitioner to be credible. The Petitioner's testimony and reports to the medical providers have been consistent. Although the Petitioner showed Waddell's signs, Dr. Zelby acknowledged that was not statistically significant. Further, his treating physicians – who are the most familiar with the Petitioner and his condition – did not render any findings of exaggeration or malingering.

Lastly, Dr. Gornet continued to opine that the Petitioner's current condition was causally related to the work accident.

Therefore, the Arbitrator finds that the Petitioner's current cervical spine condition is causally related to the August 31, 2020. 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).

The treatment the Petitioner received since the Commission decision was conservative in nature and in line with the Commission's findings. There was no evidence that this treatment was unreasonable or unnecessary.

Therefore, the Arbitrator finds the medical expenses in Petitioner's Exhibit 6 to be reasonable and necessary and orders the Respondent to pay these expenses pursuant to Section 8(a) of the Act. 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).

Dr. Zelby opined that surgery was not reasonable or necessary. This is primarily based on his belief that the Petitioner did not suffer a cervical injury as a result of the accident. Dr. Gornet was similarly consistent in his opinion that surgery is necessary to relieve the Petitioner's symptoms. As stated above, the Arbitrator gives greater weight to Dr. Gornet's opinions.

Although the Petitioner is working, he is unable to perform the heavy physical labor that he did while working for the Respondent. He has been able to work as an equipment operator and is working as a truck driver – both of which are not as physically rigorous as his job for the Respondent.

An important function of the Act is to give workers the treatment necessary to try to return them to the conditions they were in prior to their work accidents. Although efforts have been made to return the Petitioner to her pre-accident state, this has not been accomplished, and treatment options have not been exhausted. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically a three-level cervical disc replacement as recommended by Dr. Gornet. The Respondent shall authorize and pay for such.

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009640
Case Name	Lisa Phebus v. CSL Behring, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0386
Number of Pages of Decision	14
Decision Issued By	Maria Portela, Commissioner, Christopher Harris, Commissioner

Petitioner Attorney	Peter Bobber
Respondent Attorney	Kenneth Smith

DATE FILED: 9/16/2025

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Christopher Harris, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF LA SALLE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

LISA PHEBUS,

Petitioner,

vs.

NO: 20 WC 09640

CSL BEHRING, LLC,

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 causation, medical expenses, nature and extent and prospective medical treatment and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds the Petitioner's cervical condition to be causally related to injuries sustained in the work accident on January 26, 2020 and modifies the Arbitrator's Decision accordingly. The Commission awards the medical bills related to treatment to the cervical spine and modifies the permanency award up from 12.5% loss of the person as a whole to 20% loss of the person as a whole – 15% loss of the person as a whole for the head injury and 5% loss of use of the person as a whole for the cervical spine injury. This is in addition to the 6 weeks of statutory loss benefits Respondent previously paid for Petitioner's skull fracture.

On January 26, 2020, Petitioner was working on a rolling ladder when the ladder moved while Petitioner was descending, causing her to fall approximately 5 feet and land on the back left side of her head. (T. 19-20) Petitioner was taken by ambulance to St. Mary's Hospital. (T. 22) Petitioner underwent CT scans of the head and cervical spine which showed severe disc degeneration at C5-6, C6-7 and C7-T1 as well as an acute fracture of the left occipital bone extending to the skull base. (Px1) Petitioner complained of both headache and neck pain status post fall. (Px1, p. 42) Her musculoskeletal exam was positive for neck pain. (Px1, p. 43)

As St. Mary's Hospital did not have a neurosurgeon on site, Petitioner was transferred to Christ Hospital via ambulance. She was wearing a cervical collar. (T. 24) While at Christ Hospital, Petitioner came under the care of neurosurgeon Dr. Leslie Schaffer. (T. 24) Petitioner also followed up with Dr. Schaffer on February 19, 2020, and March 4, 2020. Dr. Schaffer released Petitioner to work with no restrictions as of March 5, 2020. (Px7)

Petitioner continued to have ongoing problems and consulted the company nurse who recommended she go to Riverside Neurology. (T. 26) Petitioner was seen at Riverside Neurology by Nurse Practitioner Willbarger, Dr. Khatri and ultimately, Dr. Dodt. (T. 27-28)

On March 10, 2020, Petitioner was seen by Nurse Practitioner Willbarger for complaints of constant headaches and dizziness which she related to her work injury. Petitioner complained of occasional radiation of pain into her shoulder and neck. Nurse Practitioner Willbarger diagnosed Petitioner with post-concussion syndrome and intractable acute post-traumatic headache for which Petitioner was prescribed medications. (Px3) Petitioner continued to follow up for ongoing daily headaches and pain in the occipital region where she hit her head. (Px3, p. 62)

On February 1, 2022, Petitioner followed up with Dr. Dodt for throbbing headaches with photophobia. Dr. Dodt completed FMLA paperwork which indicated it would be necessary for Petitioner to work a reduced schedule and/or be absent from work on an intermittent basis. (Px3) In May of 2022, Dr. Dodt was concerned that Petitioner might have overlying occipital neuralgia from her post-concussion syndrome with intractable chronic post-traumatic headache. He referred Petitioner to a pain specialist. (Px3)

On June 13, 2022, Petitioner underwent a CT of the cervical spine which showed misalignment involving the cervical vertebral column and extensive degenerative changes. (Rx6) When Petitioner reported to Dr. Issa for pain management on June 13, 2022, Dr. Issa noted Petitioner's worst pain was located in the left occipital region and she described it as a squeezing sensation that radiates to the neck and up her head to the left parietal region. Dr. Issa diagnosed Petitioner with a left occipital bone non-depressed fracture as a result of the January 26, 2020, fall and felt there might be a component of left occipital neuralgia in addition to post-concussion syndrome. Dr. Issa also believed Petitioner's cervical spine showed cervical facet arthropathy which could be contributing to Petitioner's pain. (Px3, Rx5, Rx6)

Petitioner continued to follow up with Dr. Dodt for the intractable chronic post-traumatic headaches and on June 5, 2023, reported that the pain is primarily in the upper cervical spine and into the left occipital area. (Px3, Rx6) A June 29, 2023 MRI revealed multilevel significant foraminal stenosis. (Px3) When she returned to Dr. Dodt in September of 2023, Dr. Dodt diagnosed Petitioner with intractable chronic post-traumatic headache, occipital neuralgia of the left side, closed fracture of left side of occipital bone and cervical degenerative disc disease. Dr. Dodt recommended physical therapy. (Px3)

On November 13, 2023, Petitioner began treating with pain specialist, Dr. Said, as Respondent would not approve the treatment recommended by Dr. Issa. Petitioner complained of left posterior headaches and reported she had continued to work through the headaches and that prior to the work accident she only had sinus headaches through the temples. Dr. Said opined that

based on Petitioner's history, physical exam and imaging, Petitioner's pain was likely secondary to cervical spondylosis and myofascial pain syndrome. He recommended trigger point injections and possible Botox injections. (Px5) Petitioner underwent injections with Dr. Said that did provide some relief of her headaches.

While treating with Dr. Said, Petitioner continued to treat with Dr. Dodt who continued to prescribe medications for her headaches.

On April 1, 2024, Josephine Jones, Dr. Said's PA, released Petitioner at maximum medical improvement, but with the caveat she would likely need to repeat injections approximately every 6 months. (Px5)

Petitioner returned to Dr. Dodt on July 2, 2024, for her intractable chronic post-traumatic headache and closed fracture of the left side of occipital bone and for continued medications. (Px3)

Petitioner returned to Dr. Said's office on October 18, 2024, for head and neck pain and underwent radiofrequency ablation on October 24, 2024. (Px5) She again returned to Dr. Dodt on November 1, 2024. (Px3)

Petitioner has given a credible and consistent account of the mechanism of injury as well as her complaints of pain throughout the course of her treatment and in her testimony.

On the date of the accident, January 26, 2020, Petitioner specifically complained of both a headache and neck pain when seen at St. Mary's Emergency Department. (Px1, p. 42) The musculoskeletal examination was also positive for neck pain. (Px1, p. 43) CTs were ordered of both the head and cervical spine. The cervical spine CT showed severe disc degeneration present at C5-6, C6-7 and C7-T1. (Px1)

In May of 2020, Petitioner was noted to have continued pain in the occipital region which is a region of the brain located at the back of the head. (Px3, p. 62) Complaints in headache characteristics continued throughout Petitioner's treatment with Nurse Practitioner Willbarger and Dr. Khatri through 2020 and 2021. (Px3)

In February of 2022, Dr. Dodt completed FMLA paperwork due to the severity of Petitioner's headaches. By May of 2022 Dr. Dodt noted that Petitioner might have overlying occipital neuralgia (a condition characterized by pain in the back of the head and neck) and referred Petitioner to a pain specialist. (Px3, p. 231)

On June 13, 2022, upon referral from Dr. Dodt, pain specialist Dr. Issa examined Petitioner, and noted a consistent history of the January 26, 2020, work accident, and that she suffered with "chronic pain the left occipital region," which "radiates in the neck and up her head to the left parietal region." (Px3, p. 250) After the examination, Dr. Issa opined that he agreed that the Petitioner's complaints may be partially explained by occipital neuralgia in addition to post-concussion syndrome as well as cervical facet arthropathy "which could be contributing to her pain." (Px3, p. 254) In June of 2022 Petitioner also

underwent a CT of the cervical spine which showed misalignment in the cervical vertebral column. (Rx6) In June of 2022, Petitioner complained of pain to the left occipital region that radiates to the neck. (Px3, Rx5, Rx6) Petitioner continued to complain of pain related to occipital neuralgia in September of 2022. (Px3)

Although the Arbitrator's Decision cites to Petitioner's first complaint of neck pain being on June 5, 2023, this statement is contradicted by the medical records of the St. Mary's Emergency Department of January 26, 2020, the February 2022 records of Dr. Dodt, and the June 2022 records of Dr. Issa. (Px1, Px3, Rx5).

On June 5, 2023, Petitioner did make a specific complaint that the pain was primarily located in the upper cervical spine and into the left occipital area. (Px3) On June 29, 2023, Petitioner underwent an MRI which showed multilevel significant foraminal stenosis. (Px3) Respondent's Section 12 examiner noted in July of 2024 that Petitioner had no history of headaches other than sinus headaches prior to January 26, 2020 (Rx7, page 2 of 14), and that her headaches were related to cervical spondylosis and myofascial pain. (Rx7, page 13 of 14)

The Petitioner's complaints of headaches and neck pain never changed following the work accident. Additionally, the evidence supports that Petitioner had no complaints regarding headaches of the type she had following the work accident or cervical spine pain prior to the work accident. A causal connection between work duties and an injured employee's condition may be established by a particular chain of events, notwithstanding a complete lack of medical testimony establishing causation. Specifically, 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).

The Commission finds that Petitioner met her burden of proving that both her head and cervical spine conditions are causally related to the work accident of January 26, 2020, and awards all related outstanding medical expenses referenced in Px6.

Additionally, the Commission modifies the Arbitrator's permanency award and increases it from 12.5% loss of use of a person as a whole to 20% loss of the person as a whole – 15% loss of use of the person for the head injury and 5% loss of use of the person for the aggravation of the cervical spine condition which resulted in ongoing headaches and the need for continued treatment. The Commission affirms the award of the 6 weeks of statutory permanency for the skull fracture. In support of same, the Commission amends factor (v) of Section 8.1b(b) to add the following:

Moreover, there is evidence of disability which shows that the Petitioner sustained an aggravation of the degenerative condition in her cervical spine which both Petitioner's treating medical providers and Respondent's Section 12 examiner agree are causing or contributing to cause Petitioner's ongoing debilitating headaches. When Petitioner presented to the St. Mary's Emergency Department immediately following the January 26, 2020 work accident, she complained of both head and neck pain. Prior to that date Petitioner had no complaints nor sought treatment for debilitating headaches, head pain or neck pain. This factor is given

significant weight. Based on the factors above, the injuries sustained by Petitioner caused a 20% loss of use of the person as a whole as a result of her work incident.

Finally, Section 8(a) rights remain open for Petitioner to continue the treatment for her head/headaches and cervical spine conditions with Drs. Dodt and Said in the form of medications and the left C3, C4, TON MB radiofrequency ablation every 6 months as well as trigger point injections recommended by Dr. Said.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$968.00 per week for a period of 5-3/7 weeks, January 27, 2020, through March 5, 2020, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$836.19 per week for a period of 100 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 20% loss of use of the person as a whole – 15% loss of use of the person as a whole for injuries related to the head and 5% loss of use of the person as a whole for injuries related to the cervical spine, in addition to the 6 weeks of statutory loss benefits it previously paid for Petitioner's skull fracture.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$31,006.88 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 Section 8(a) rights remain open for Petitioner to continue the treatment for her headaches with Drs. Dodt and Said in the form of medications and the potential left C3, C4, TON MB radiofrequency ablation every 6 months and trigger point injections as recommended by Dr. Said's office.

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.

September 16, 2025

/s/ Maria E. Portela

Maria E. Portela

MEP/dmm

/s/ Marc Parker

Marc Parker

O: 82125

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DISSENT

I respectfully dissent from the Majority's finding that Petitioner established causal connection between her work accident and her alleged complaints. In my view, the Arbitrator correctly determined that the Petitioner failed to prove that her cervical injuries were causally related to the January 26, 2020 accident.

Petitioner relies on a chain of events theory in support of causation for the cervical spine. However, the medical evidence does not support Petitioner's position. The initial treating records from Amita St. Mary's reflect that Petitioner both complained of and denied any pain in the neck. It is clear from the January 2020 CT scan and June 2023 MRI that Petitioner's cervical spine had degenerative changes. What is clear though is that nearly three years elapsed before complaints of neck pain again appeared in the record with any consistency.

Petitioner did not provide any medical causation opinion relating the current condition of her neck to the work injury. Her own treating physician did not find an issue with her neck, and there was no treatment recommended to treat the cervical spine itself. On the contrary, the only medical evidence in the record that the cervical neck is related to Petitioner's head injury is that the trigger point injections and radiofrequency ablations ("RFA"), which were specifically prescribed to alleviate her head pain, had to be administered in her neck. There is no evidence that they had to be administered in that location because of a defect or injury in the neck itself. There is also no testimony as to whether the work injury exacerbated or accelerated her degenerative cervical spondylosis.

Although I agree that an award of 20% person-as-a-whole is appropriate, I would base that award entirely on Petitioner's injury and residual complaints related to the skull fracture and not on any cervical condition. I would give greater weight to the fifth factor in recognizing that treatment of Petitioner's condition appears to require repeat nerve blocks and RFA's to alleviate the pain from the causally related accident. As such, Petitioner's injury appears to be more severe than similarly award afflictions, thus meriting an increase in permanent partial disability.

s/ Christopher A. Harris

Christopher A. Harris

September 16, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC009640
Case Name	Lisa Phebus v. CSL Behring, LLC
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Peter Bobber
Respondent Attorney	Kenneth Smith

DATE FILED: 12/18/2024

/s/ Gerald Granada, Arbitrator
Signature

DECEMBER 18 2024

INTEREST RATE WEEK OF DECEMBER 17 2024 4.16%

STATE OF ILLINOIS)
)SS.
 COUNTY OF **LA SALLE**)

☐	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**

Lisa Phebus
 Employee/Petitioner

Case # **20** WC **009640**

v.

CSL Behring, 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 **Gerald Granada**, Arbitrator of the Commission, in the city of **Ottawa**, on **11/6/2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☒ Other **1. Did Petitioner Exceed Choice of Physicians? 2. Is Petitioner entitled to Prospective Medical Care?**

FINDINGS

On **1/26/2020**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

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

In the year preceding the injury, Petitioner earned **\$75,504.00**; the average weekly wage was **\$1,452.00**.

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

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

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

Respondent shall be given a credit of **\$5,254.86** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$5,020.14 - Statutory PPD** for other benefits, for a total credit of **\$10,275.00**.

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

ORDER

Respondent shall pay petitioner for reasonable and necessary medical services relating to Petitioner's head condition, subject to any applicable reductions pursuant to the Medical Fee Schedule as provided in Sections 8(a) and 8.2 of the Act. Any medical expenses related to Petitioner's cervical condition is denied.

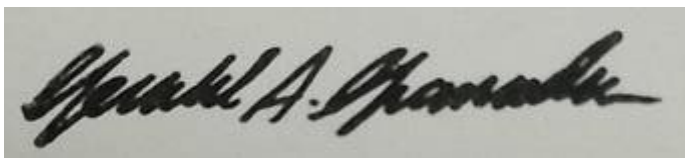
Respondent shall pay Petitioner temporary total disability benefits of **\$968.00/week** for **5 3/7ths** weeks, commencing **1/27/2020** through **3/5/2020**, as provided in Section 8(b) of the Act. Respondent shall receive a credit for any TTD it has already paid.

Respondent shall pay Petitioner permanent partial disability benefits of **\$836.19/week** for **62.5** weeks, because the injuries sustained caused the **12.5%** loss of the person as a whole, as provided in Section 8(d)2 of the Act in addition to the **6** weeks of statutory loss benefits it previously paid for Petitioner's skull fracture.

Petitioner's claim for prospective medical care related to her cervical condition 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 Gerald Granada

DECEMBER 18 2024

FINDINGS OF FACT

This case involves Petitioner Lisa Phebus, who alleges to have sustained injuries while working for Respondent CSL Behring, LLC on January 26, 2020. Respondent disputes Petitioner's claims, with the issues being: 1) causation; 2) medical expenses; 3) prospective medical; 4) TTD; 5) choice of doctors; and 6) permanency.

Petitioner commenced her employment with Respondent, a company which manufactures medications from human plasma, on January 6, 1992, and has worked there continuously for the past 32 years. She works as a Union Operator. Physically, her job requires her to clean tanks and keep the manufacturing process going. The tanks are 4000-liter stainless steel tanks to which she hooks up hoses to transfer liquids to and from the tanks.

On January 26, 2020, Petitioner was cleaning the tanks by climbing up ladders and hooking up and disconnecting hoses to the tanks and pipes. The "ladder" Petitioner utilized was a movable staircase which has four wheels and is designed to lock into place as you climb the ladder. It has handrails on both sides of the stairs. At the time of her work accident, her feet were about five feet off the ground. As she descended the ladder, it moved unexpectedly and caused her to fall backwards with the back left side of her head crashing onto the concrete floor below. While on the floor following the accident, Petitioner indicated that the back of her head was "killing her" and she could not move. Petitioner was placed on a stretcher, fitted with a cervical collar and taken from the scene of the accident by ambulance to St. Mary's Hospital in Kankakee.

At St. Mary's Hospital, Petitioner was diagnosed with a skull fracture with concussion. (PX1, p.53-55). Petitioner was then transferred by ambulance to Christ Hospital for a neurosurgical consult given the height from which she fell and her confusion, "dazed" presentation and nausea. (PX1, p.54).

At Christ Hospital, a second CT scan of the head revealed a subacute left occipital calvarial fracture extending to the posterior occipital condyle. (PX2, p. 6). She was treated with multiple medications including Norco/hydrocodone, Zofran for nausea, Lovenox, Floricet, Butalbital and Tylenol. (PX2, pp.137-140). Neurosurgeon Dr. Schaffer examined Petitioner and diagnosed head trauma with a skull fracture of the left occipital extending to the base, and scalp contusion. (PX2, p.58). He directed Petitioner to remain off work, gave her medication and had her follow up with him within several weeks. (PX2, p.17).

On February 19, 2020, Petitioner underwent a repeat head CT scan which was unremarkable. (PX7, p.1). Dr. Schaffer's office noted that Petitioner was to remain off work until evaluated again on March 4, 2020 as she works in a "cold room" with a slippery floor. (PX7, p.1). On March 4, 2020, Dr. Schaffer released Petitioner from his neurosurgical care and indicated that she could return to work. (PX7, p.2).

On March 6, 2020, Petitioner returned to work and has worked continuously for Respondent since then. Upon returning to work, Petitioner continued to have significant symptoms. She had intense "pressures" in her head and she could barely perform her work due to the pain and her resulting inability to focus. Petitioner discussed her problems with Respondent's nurse and by whom she was directed to obtain neurological care at Riverside Medical Center.

On March 10, 2020, the Riverside Neurology Department first saw Petitioner, who complained of severe headaches, worse with activity with some dizziness and lightheadedness, especially with positional changes. (PX3, p.29). Nurse Practitioner Willbarger diagnosed Petitioner with post concussion syndrome, intractable acute post-traumatic headaches and lightheadedness. (PX3, p.31). Willbarger prescribed a brain MRI, concussion physical therapy and Topamax. (PX3, p.33). Thereafter, Petitioner continued to have significant headaches, and her treater doubled the Topamax dosage amount to 50 mg and prescribed Fioricet. (PX3, pp. 54-55). She was later prescribed Amitriptyline. (PX3, pp. 145, 161).

In 2021, Petitioner's care was transferred from N.P. Willbarger, who left the practice, to Dr. Khatri, who replaced Willbarger in the same office. On July 16, 2021, Dr. Khatri noted that due to ineffectiveness of medical management of worsening headaches which are of a "squeezing" and "throbbing" nature, he planned to ween her off the amitriptyline and start propranolol and Rizatriptan. (PX3, pp.176-179).

On November 29, 2021, at Respondent's request, Petitioner underwent a Section 12 examination by neurosurgeon, Dr. Jerry Bauer. Dr. Bauer diagnosed Petitioner with a work-related skull fracture for which he deemed her at MMI on March 5, 2020 when she returned to work. (RX3, p.9). He did not address her ongoing headaches or symptoms and indicated no further treatment related to the skull fracture was necessary. (RX3, p.10).

On February 1, 2022, Petitioner saw Dr. Dodt as her Petitioner's care was from Dr. Khatri to Dr. Dodt in the same office. Dr. Dodt noted Petitioner complained of headaches, throbbing in character, with photophobia. (PX3, p. 200). He diagnosed intractable chronic post-traumatic headaches and post-concussion syndrome for which he prescribed gabapentin/Neurontin. (PX3, pp. 203-204). Dr. Dodt

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Attachment to Arbitration Decision
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filled out FMLA paperwork for Petitioner indicating she may need to be off work 2-3 days per month due to her headaches which increase in severity. (PX3, pp. 220-221). Petitioner testified that she has taken days off work regularly due to her ongoing headaches. On those days, she can barely get off the couch or do anything due to the pain in her head.

On May 2, 2022, Dr. Dodt noted Petitioner's headache centered in the left occipital area where she hit her head. (PX3, p.231). He also noted tenderness in the scalp and left occipital area for which he indicated she may be experiencing occipital neuralgia. (PX3, p.231). He indicated he would continue the Neurontin and recommended she see a pain specialist. (PX3, p.231).

On June 5, 2023, Petitioner followed up with Dr. Dodt, who suspected some of her pain might be coming from the neck and ordered a cervical MRI. (P.Ex.3, p.289). The September 13, 2023 MRI revealed degenerative arthritis with osteophytes in the cervical spine. (PX3, p.307). In addition to modifying her medications, Dr. Dodt also ordered physical therapy for the neck. (PX3, p.311).

On June 13, 2022, Petitioner saw Pain Specialist Dr. Issa upon referral from Dr. Dodt. (PX3, p.250). Dr. Issa noted a consistent history of the January 26, 2020 work accident with the resulting occipital skull fracture and chronic left occipital region pain. (PX3, p.250). He noted that the pain was of a "squeezing" nature which radiates to the neck and into the left parietal region of her head. (PX3, p.250). After examination, Dr. Issa opined he agreed that Petitioner's complaints may be partially explained by occipital neuralgia in addition to post-concussion syndrome. (PX3, p.254). He also believed that cervical facet arthropathy might be contributing as well. He recommended a left greater occipital nerve block for diagnostic and therapeutic purposes pending workers' compensation insurance approval. (PX3, p.254).

Petitioner indicated that the workers' compensation carrier would not approve the injection(s) recommended by Dr. Issa so Dr. Dodt's office referred her to Dr. Said. Additionally, the workers' compensation carrier would not authorize the physical therapy, but ATI provided three physical therapy visits from October 5, 2023 through October 16, 2023. (PX4, pp. 3-4, 17-18). Petitioner did not get any symptom relief from the limited physical therapy.

On November 13, 2023, Petitioner saw Dr. Said, who recommended trigger point injections to the head and neck (PX5, p.6), which he subsequently performed on November 27, 2023. (PX5, p.8). Post-injection, Petitioner noted 90% improvement for several days before her pain returned. (PX5, p.13). Petitioner described the pain as "constant, sharp, dull, aching, throbbing, shooting, tingling, and worse with bending. (PX5, p.13). She noted that only rest, ice and medications could help lessen her symptoms. (PX5, p.13). Dr. Said indicated that given the success, as brief as it was, of the trigger point injections, that Petitioner could likely benefit from a left C3-4 third occipital medial branch nerve block to determine her candidacy for radiofrequency ablation (RFA). (PX5, p.15). Dr. Said performed the left C3-4 third occipital nerve medial branch blocks on February 19, 2024 and March 4, 2024, (PX5, pp.19, 22) and the radiofrequency ablation on March 18, 2024. Following the ablation, Petitioner noted 85% improvement in symptoms in her headaches and indicated this was the best she felt since her January 26, 2020 injury, noting her pain level was at 2 out of 10. (PX5, p. 25). Petitioner testified that the improvement she experiences as a result of the RFA was "life changing." On April 1, 2024, Dr. Said advised that Petitioner was at MMI, but she would need to continue her medication(s) and might need further RFA procedures as often as every six months. (PX5, p.26).

On December 4, 2023, Dr. Dodt noted that Petitioner had temporary improvement from the nerve block, but he increased the dosage of Topamax and a temporary, limited prescription of Norco. (PX3, pp.328-329). He continued to note the left occipital area as the location of her pain and continued to diagnose her condition as occipital neuralgia. (PX3, pp.329-330). Petitioner also followed up with Dr. Dodt on July 2, 2024, and most recently on November 2, 2024. (PX3, pp. 343, 347). His diagnosis continued to be occipital neuralgia of the left side with intractable chronic post-traumatic headache, fracture of the left side of the occipital bone and post-concussion syndrome. (PX3, pp.346,350). Dr. Dodt also stopped the Neurontin and Topamax, and instead prescribed Zofran for nausea and Esgic for the head pain. (PX3, pp. 343, 346-347, 350).

On July 3, 2024, neurosurgeon Dr. Bauer performed a second Section12 exam at Respondent's request. His opinions remained the same as stated in his prior report noting that Petitioner had reached MMI about six weeks after her work accident and she required no treatment for the skull fracture since then. (RX7, p.13). He noted that the cervical spondylosis and myofascial pain was not related to the injury on January 26, 2022. There were no indications for any future medical treatment related to the January 2020 work accident.

On October 18, 2024, Petitioner returned to Dr. Said, who noted Petitioner's headaches and associated pain from the neck up into the head had returned. (PX5, p.28). On October 24, 2024, Dr. Said performed another RFA procedure. (PX5, p.31).

Since her January 26, 2020 work accident, Petitioner has not suffered any other injury to her head or neck. Presently, Petitioner continues to work for Respondent, but she approaches her job differently due to her injury. Specifically, she bends differently because she has to lower herself without putting her head down. Further, she gets assistance from coworkers because of her head pain. With the permission of her supervisor, her coworkers will either change jobs with her or allow her to sit as needed to address her head pain. Additionally, Petitioner is impacted by the positive air environments at work which are air-pressure controlled areas which cause

Petitioner to experience headache/pressure pain on the left side of her head.

Petitioner calls off work as often as three to five times per month due to her symptoms being too significant. She takes this time off work with the permission of her employer after Dr. Dodt filled out the necessary FMLA paperwork. (See PX3, pp.218-222). Since the RFA procedures, Petitioner has missed fewer dates due to her head pain. When she does take a day off work due to her head pain, she lays on the couch with an icepack on her head.

Outside of work, Petitioner's head injury has also impacted her non-work activities. Specifically, she no longer flies on airplanes due to the air pressure on the plane causing head pain. Similarly, weather changes cause "pressures" in her head which causes squeezing type of head pain. She also avoids family events with young children because their noise causes her head pain. Additionally, the loud sounds from a vacuum, concert or motorcycle cause her head to hurt so she avoids these activities as well. She also is careful and has a fear of falling and hurting her head again.

Petitioner's Exhibit 6 contains outstanding bills for the medical services noted above totaling \$15,503.44. Respondent's Exhibits 1 and 2 are a Medical Payment Ledger and TTD Payment Ledger, respectively.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner's condition related to her head injury are causally connected to her January 26, 2020 work accident. There is no dispute that the Petitioner's accident caused a fracture to the skull and it is reasonable to conclude that post traumatic headaches were conditions caused by this accident. The Arbitrator finds that as a result of her accident, Petitioner sustained head injuries resulting in occipital neuralgia of the left side with intractable chronic post-traumatic headache, fracture of the left side of the occipital bone and post-concussion syndrome. The dispute on this issue is the question of whether Petitioner's cervical condition is causally connected to her work accident. On this issue, the Arbitrator finds that the Petitioner has failed to meet her burden of proof. In support of this finding, the Arbitrator relies on the preponderance of the medical evidence which show no complaints of cervical pain from her accident date through June 2023. The first reference of cervical symptoms is over three years post accident, when Petitioner saw Dr. Dodt in June, 2023 and there are no medical opinions linking the cervical condition to the Petitioner's original accident. The cervical MRI's taken in September, 2023 revealed only degenerative conditions in the cervical spine. To the contrary, Respondent offered evidence from their IME clearly indicating that the Petitioner's cervical condition was not directly related to her work accident. Given these facts, the Arbitrator concludes that the Petitioner's cervical condition is not causally connected to Petitioner's January 26, 2020 work accident.

2. Regarding the issue of medical expenses and consistent with the Arbitrator's conclusions regarding causation, the Arbitrator finds that the Petitioner's medical treatment related to her head condition has been reasonable and necessary and awards any unpaid medical expenses related to treatment for her head, subject to the fee schedule. Any claim for medical expenses related to Petitioner's cervical condition is denied based on the Arbitrator's finding that the cervical condition is not related. Respondent shall receive a credit for any medical expenses it has already paid.

3. Regarding the issue of prospective medical and consistent with the findings above, the Arbitrator further finds that the Petitioner's request for prospective medical care related to her cervical condition is denied. This includes the treatment recommended for Petitioner's cervical spondylosis and myofascial pain syndrome, including injections and radio frequency ablations.

4. Regarding the issue of TTD, the Arbitrator finds that the parties stipulated Petitioner was temporarily totally disabled from January 27, 2020 through March 5, 2020 totaling 5 3/7ths weeks. Respondent's Exhibit 2 shows it paid a total of \$5,254.86 for TTD for this time-period. Based on the above stipulations, the Arbitrator awards Petitioner the above 5 3/7ths weeks of TTD and awards Respondent a credit of \$5,254.86 for payment of same.

5. Regarding the issue of whether the Petitioner exceeded her limited choice of doctors, the Arbitrator finds that the Petitioner has not exceeded her limited choice of physicians. Petitioner was taken by ambulance from the accident scene to St. Mary's Hospital. Dr. Shawn Bala, the attending physician at St. Mary's, transferred her to Christ Hospital where she came under the care of Neurosurgeon Dr. Schaffer. Next, Petitioner's company nurse referred her to Riverside Medical Center's neurology department where she came under the care of Nurse Practitioner Willbarger who was replaced by Dr. Khatri, who was replaced by Dr. Dodt. Dr. Dodt referred Petitioner for pain management care with Dr. Issa and then Dr. Said. The Arbitrator notes there is no evidence contradicting the above. Based on the above undisputed evidence, the Arbitrator finds that Petitioner did not exceed the number of choice of physicians, and in fact, Petitioner has not exercised any choice of physician in this matter to date.

6. Regarding the issue of permanency, Petitioner was paid a statutory loss pursuant to Section 8(d)(2) of the Act for 6 weeks of compensation due to a skull fracture. The Arbitrator awards Petitioner the 6 weeks of statutory loss per this Section. Respondent is entitled to a credit for the \$5,020.14 it paid for the statutory loss. (6 x \$836.19 maximum PPD rate = \$5,020.14) (*See* RX2, p.1).

Furthermore, in addition to the statutory loss, regarding the issue of the nature and extent of the Petitioner's injuries, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no impairment rating was offered into evidence and the Arbitrator gives no weight and relevance to this factor; (ii) Petitioner is a Union Operator who was released to return to work to that same job without restrictions following this accident - a factor to which the Arbitrator gives significant weight and relevance; (iii) Petitioner was 54 years old at the time of injury - a factor to which the Arbitrator gives some weight and relevance; (iv) there was no evidence of future earnings being impacted due to this injury and the Arbitrator gives no weight and relevance to this factor; (v) there was evidence of disability which show that the Petitioner sustained a head injury resulting in occipital neuralgia of the left side with intractable chronic post-traumatic headache, fracture of the left side of the occipital bone and post-concussion syndrome, for which she underwent care in the form of injections, physical therapy, and medication from which Petitioner still has continued complaints of debilitating headaches and head pain - the Arbitrator gives great weight and relevance to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused a 12.5% loss of use of the person as a whole as a result of her work incident.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC007345
Case Name	Amy Kariolic v. State of Illinois - Southern Illinois University - Carbondale
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0387
Number of Pages of Decision	21
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Daniel Keefe
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 9/16/2025

/s/Marc Parker, Commissioner

Signature

22 WC 007345

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILLIAMSON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Amy Kariolic,

Petitioner,

vs.

No. 22 WC 007345

State of Illinois – SIU Carbondale,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, permanent partial disability, and whether the injury is limited to the leg, or whether a portion of the disability is referable to MAW, 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.

At arbitration, the parties stipulated that Petitioner's average weekly wage was \$428.10. The Arbitrator awarded Petitioner temporary total disability benefits of \$337.33/week for 39 & 5/7 weeks as provided in Section 8(a) of the Act, along with permanent partial disability benefits of \$337.33/week for 21.5 weeks, because the injuries sustained caused the 10% loss of the right leg, *as provided in Sections 8(e)9 and 8(e)10 of the Act.*

However, the state minimum TTD rate and PPD rate for this Petitioner on her September 30, 2021 date of accident are \$381.33. The Commission therefore modifies the TTD and PPD rates in this case to each be \$381.33. Also, the permanency award for the loss of use of a leg is set forth under *Section 8(e)12* of the Act. The Commission also corrects that error. All else in the Arbitration Decision is affirmed and adopted.

22 WC 007345

Page 2

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 7, 2024, is modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner temporary total disability benefits of \$381.33 per week for 39 & 5/7 weeks, commencing October 1, 2021 through July 5, 2022 as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits of \$381.33 per week for 21.5 weeks, because the injuries sustained caused the 10% loss of the right leg, as provided in Section 8(e)12 of the Act.

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.

September 16, 2025

MP/mcp
o-09/11/25
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	22WC007345
Case Name	Amy Kariolic v. State of Illinois - Southern Illinois University - Carbondale
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Daniel Keefe
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 11/7/2024

/s/ Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF NOVEMBER 6 2024 4.26%

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**

Amy Kariolic
 Employee/Petitioner

Case # **22** WC **7345**

v.

Consolidated cases: **N/A**

SIU 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 **9/5/14**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **9/30/21**, 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 as to the right knee and is not as to the low back.

In the year preceding the injury, Petitioner earned **\$22,257.00** the average weekly wage was **\$428.10**.

On the date of accident, Petitioner was **44** 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 **\$12,025.93** for TTD, \$- for TPD, \$- for maintenance, and \$- for other benefits, for a total credit of \$-.

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

ORDER

Respondent shall pay the reasonable and necessary medical services incurred on or prior to 3/14/22 by agreement of the Respondent, 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 group health plan or 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 **\$337.33/week** for **39 & 5/7** weeks, commencing 10/1/21 through 7/5/22 as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$337.33/week** for 21.5 weeks, because the injuries sustained caused the 10% loss of the right leg, as provided in Sections 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.

Jeanne L. AuBuchon
Signature of Arbitrator

NOVEMBER 7 2024

PROCEDURAL HISTORY

This matter proceeded to trial on September 5, 2024. The issues in dispute are: 1) the causal connection between the accident and the Petitioner's right knee and low back conditions after March 14, 2022; 2) liability for medical bills incurred after March 14, 2022; 3) entitlement to temporary total disability (TTD) benefits after March 14, 2022; and 4) the nature and extent of the Petitioner's injury.

The parties stipulated that the Petitioner returned to work full duty on October 24, 2022, and subsequently stopped working, was placed on administrative leave, then disability leave for reasons unrelated to her right knee.

FINDINGS OF FACT

At the time of the accident, the Petitioner, who was 44 years old, was employed by the Respondent as an associate at Rainbow's End Child Development Center working with two-year-olds. (AX1, T.11-13) On September 30, 2021, the Petitioner was walking down a hallway and slipped on a wet floor, with her foot going out from under her. (T. 15) She said she went straight down and hammered her knee onto the ground. (Id.) Accident reports submitted by the Respondent described the incident consistently with the Petitioner's testimony. (RX1)

The Petitioner testified that before the accident, she had not injured her right knee nor had medical treatment for her right knee. (T. 35-36) On cross-examination, she denied having been diagnosed with fibromyalgia and said she lately was diagnosed with a parasitic infection "that they think is causing that." (T. 36) She said the condition causes pain. (T. 36-37) When confronted with a statement she made to the physical therapist that she had fibromyalgia, the Petitioner testified that she told the physical therapist that there was a possibility that some of her pain may be linked to fibromyalgia, but she wasn't sure. (Id.) She added that she only got diagnosed with

fibromyalgia to obtain a medical card. (T. 39) The Petitioner also acknowledged having sciatica prior to the accident that comes and goes and is aggravated. (T. 38, 43)

Following the accident, the Petitioner went to the emergency room at SIH Memorial Hospital and complained of right knee pain. (T. 16, PX2) Right knee X-rays were normal. (PX2) The Petitioner was instructed to use a knee immobilizer and crutches and was referred to the Orthopaedic Institute of Southern Illinois (OISIL). (Id.) She was allowed to return to work after released to do so by the orthopedic surgeon. (Id.)

On October 5, 2021, the Petitioner saw David Mason, a physician assistant for Dr. Haines Paik, an orthopedic surgeon at OISIL. (PX3) The Petitioner described the accident. (Id.) After X-rays and a physical exam, PA Mason suspected a contusion and bursitis from the fall. (Id.) He recommended that the Petitioner continue to work on range of motion, using ice and taking over-the-counter anti-inflammatories. (Id.) He gave restrictions of sedentary work only. (Id.)

At a follow-up visit on October 22, 2021, the Petitioner reported continued knee pain and had swelling and bruising. (Id.) PA Mason recommended an MRI and continued work restrictions. (Id.) The MRI was performed on November 17, 2021, at Cedar Court Imaging and showed: 1) anterior and posterior cruciate ligament sprain; 2) intrasubstance tear in the posterior horn of the medial and lateral meniscus; 3) mucoid degeneration of the anterior horn of the medial and lateral meniscus; 4) Grade I injury of the medial collateral ligament; 5) quadriceps tendinosis; 6) mild synovial effusion; 7) Baker's cyst; 8) mild changes of osteoarthritis in the knee joint in the form of osteophytes, thinning of articular cartilage and reduction of joint space; 9) Grade II chondromalacia patella; 10) mild edema involving the patella that could represent contusion if there was significant history of injury in that region; 11) areas of red marrow in the distal femur and proximal tibia; and 12) diffuse subcutaneous edema around the knee joint, especially in the

prepatellar and infrapatellar region with minimal associated fluid suggestive of bursitis or injury. (Id.)

The Petitioner returned to OISIL on November 19, 2021. (Id.) PA Mason noted that the Petitioner had been very slow to progress and continued to have pain in the anterior aspect plus pain in the medial and lateral joint line. (Id.) He noted that the Petitioner continued to limp and had a firm knot in the anterior aspect of her knee. (Id.) On the MRI, PA Mason described diffuse soft tissue changes over the prepatellar region possibly consistent with prepatellar bursitis, signal changes in the anterior cruciate ligament (ACL) and a significant lateral tilt to the patella but no abnormal translation of the femur or tibial or obvious medial retinacular abnormalities. (Id.) PA Mason diagnosed ACL sprain and prepatellar bursitis and recommended oral steroids and physical therapy. (Id.) Dr. Paik gave work restrictions of no squatting or lifting. (Id.)

The Petitioner underwent physical therapy at SIH Anna Rehab beginning December 17, 2021. (PX2) The initial assessment paperwork listed other medical problems that included lumbosacral degenerative disc disease, sacroiliac joint dysfunction of both sides, chronic back pain, herniated lumbar intervertebral disc, restless legs and primary fibromyalgia syndrome. (Id.) All of these problems were listed as occurring to the present. (Id.)

The Petitioner testified that she did not have much confidence in Dr. Paik, so she sought care from Dr. James Edwards, an orthopedic surgeon at Advanced Orthopedic Specialists. (T. 17, PX4) She saw Dr. Edwards on December 29, 2021. (Id.) After an examination and review of X-rays and the MRI, Dr. Edwards felt that the Petitioner had symptomatic lateral patellar compression syndrome and traumatic prepatellar bursitis. (Id.) He discussed the potential for surgical intervention and recommended continuing physical therapy and a possible aspiration injection of the prepatellar bursa. (Id.)

Physical therapy notes from December 30, 2021, state that the Petitioner was ambulating with a slight limp. (PX2) On January 20, 2022, the Petitioner reported to the therapist that her back was worse, and, since having COVID, it had been aggravated. (Id.) On January 27, 2022, the Petitioner reported that she had increased pain in her right low back but felt that her knee was getting better. (Id.) On February 9, 2022, she reported that her knee was hurting more and that she was having shooting pain from the low back, buttocks and lateral thigh. (Id.)

At a follow-up visit with Dr. Edwards on February 14, 2022, the Petitioner underwent a steroid injection. (PX4) Dr. Edwards gave restrictions of sedentary work only. (Id.) The Petitioner testified that the injections provided relief for only a few days. (T. 18-19)

At her last physical therapy visit on March 7, 2022, the Petitioner demonstrated good knee range of motion and strength but continued to struggle with constant aching and burning pain along the medial joint line, patellar tendon and quadriceps tendon medially. (Id.) She arrived at therapy with an antalgic gait pattern and complained of pain in the right low back. (Id.)

On March 14, 2022, the Petitioner reported to Dr. Edwards that therapy helped to some degree, but she plateaued and continued to have pain with activities. (Id.) Dr. Edwards recommended arthroscopy with lateral release and other treatments as indicated. (Id.) He continued work restrictions. (Id.)

On March 17, 2022, the Petitioner filed her Application for Adjustment of Claim describing the accident and stating that the body part affected was the right knee. (AX2)

The Petitioner testified that while awaiting surgery, she had to limp around with a sideways kneecap. (T. 20)

Dr. Edwards performed a right knee arthroscopy with lateral release on March 31, 2022. (PX4) At a follow-up visit on April 12, 2022, Dr. Edwards noted that the Petitioner was definitely

improving. (Id.) The Petitioner stated that she was having more difficulties with ambulation from her back secondary to her knee. (Id.) Dr. Edwards recommended physical therapy for both and sedentary work restrictions. (Id.) The Petitioner began physical therapy on May 27, 2022, at Union County Hospital that included aquatic therapy. (PX5)

On June 14, 2022, Dr. Edwards gave work restrictions of no squatting, no kneeling and no lifting more than 10 pounds. (PX4)

The Petitioner underwent a Section 12 examination on July 5, 2022, by Dr. Timothy Farley, an orthopedic surgeon at MotionOrthopaedics. (RX2) Dr. Farley reviewed medical records, took a history from the Petitioner and performed a physical examination. (Id.) He noted that the Petitioner had complaints of pain, loss of motion, stiffness, weakness, instability and inability to bear weight. (Id.) She rated her pain as ranging from 6/10 to 8/10. (Id.) Dr. Farley reviewed the MRI report, but not the images. (Id.) He stated that the Petitioner had a very small, dime-sized area of bruising on the central inferior portion of her patella but no effusion or deformity. (Id.) Dr. Farley stated that the Petitioner seemed to “somewhat exaggerate” the pain in her knee. (Id.)

Dr. Farley concluded that the Petitioner suffered a prepatellar contusion with reactive posttraumatic prepatellar bursitis. (Id.) He said that with time, swelling goes down and resolution of that should have been complete. (Id.) He said there was no evidence that the Petitioner’s kneecap was “sideways for over six months,” as she claimed. (Id.) He did not think the MRI dictation noted any findings of obvious lateral patellar malposition. (Id.)

Regarding the surgery, Dr. Farley did not think it was an appropriate intervention. (Id.) He believed that after a course of physical therapy and an intra-articular injection, no further intervention would have been indicated given the objective findings on the MRI. (Id.) He thought over-the-counter anti-inflammatories and ice to the anterior aspect of the knee would have been a

sufficient and appropriate treatment recommendation. (Id.) He said the Petitioner's prognosis was guarded, adding that he believed she showed signs of symptom magnification and malingering. (Id.) He believed the Petitioner was at maximum medical improvement (MMI), and he would place no restrictions on her. (Id.)

At a follow-up visit on July 12, 2022, Dr. Edwards was concerned about the Petitioner's slow progression, as she was having persistent pain. (Id.) He recommended an MRI, which was denied by the Respondent. (Id.) The Petitioner's last physical therapy visit was July 22, 2022. (PX5) There was no assessment in the physical therapy records. (Id.) The Petitioner testified that during aquatic therapy, her "kneecap kept coming out," and another MRI was requested. (T. 20)

On August 26, 2022, Dr. Edwards performed a steroid on the Petitioner's right knee. (Id.) At her last visit with Dr. Edwards on October 21, 2021, the Petitioner overall seemed to be improved, but she still had some soreness and was still occasionally wearing a brace. (PX4) She stated that she had gotten much better with kneeling and squatting. (Id.) Dr. Edwards released her to return to work without restrictions. The Petitioner testified that she returned to work a few days after that. (T. 21) She said she worked for another five months, during which time she struggled to keep up with the kids and with getting up and down from the floor. (T. 21) She said she had pain in her knee, could not kneel and could not put any pressure on her knee. (T. 24) On cross-examination, she agreed that when she left work in March 2023, it was for an issue unrelated to this workers' compensation case. (T. 40)

Anna Sanders, workers' compensation and disability coordinator for Southern Illinois University, testified that before the Petitioner was released to work in full duty on October 24, 2022, the Respondent was unable to accommodate the Petitioner's work restrictions. (T. 45-46)

At the request of the Petitioner's counsel, the Petitioner underwent an independent medical evaluation on April 13, 2023, performed by Dr. Steven Stahle, a sports medicine physician. (PX1, Deposition Exhibit 2) The Petitioner continued to complain of pain and discomfort in the right knee that she rated as 2/10. (Id.) After reviewing medical records and performing a physical examination, Dr. Stahle opined that the work accident was the prevailing cause of the Petitioner's right knee pain and requirement for the surgery and injections. (Id.) He said the Petitioner was at MMI from the original injury on September 30, 2021, and will require ongoing home strengthening exercises throughout her life for her right knee. (Id.) He gave the Petitioner a permanent partial disability rating of 30 percent at the level of the right knee. (Id.)

Dr. Farley testified consistently with his report at a deposition on November 14, 2023. (RX3) He explained that lateral compression compartment syndrome occurs when the patella does not sit in the front of the femur/trochlear groove in such a way that the forces go across the entirety of the patella. (Id.) He said the patella is tilted very far to one side and leads to advanced cartilage loss in the lateral patella or the lateral trochlear groove. (Id.) He said a diagnosis of lateral compression compartment syndrome that requires significant findings of advanced cartilage loss on an MRI or arthroscopy. (Id.) He said the condition oftentimes gets mistaken and overstated, adding that a slight tilt in the patella is very common in females. (Id.) He said that on the Petitioner's MRI, there was Grade 2 chondromalacia of the patella, which he characterized as not a significant loss of cartilage and would be considered asymptomatic. (Id.)

As to the mechanism of injury, Dr. Farley acknowledged that an acute dislocation can occur, but the lateral tilt of the patella in lateral compression compartment syndrome can't happen traumatically unless you rip a portion of the medial retinaculum. (Id.) He also stated that a traumatic impact of the knee could "theoretically" cause a previously asymptomatic condition to

become symptomatic but it was “not at all possible” that the impact on the Petitioner’s right knee could have caused or contributed to a greater tilt in her patella. (Id)

Regarding the lateral release, Dr. Farley stated that the procedure is being done “less and less and less” by sports medicine trained physicians because it does not seem to be an effective procedure for a lot of patellofemoral problems. (Id.) In the Petitioner’s case, he believed the procedure did not match the mechanism of injury, the MRI findings, the history the Petitioner provided or the physical exam findings. (Id.)

Dr. Farley testified that the Petitioner would have been at MMI after an MRI, a course of physical therapy and an intraarticular injection. (Id.)

Dr. Stahle testified consistently with his report at a deposition on November 17, 2023. (PX1) He said that in his examination, he reviewed the films from the November 17, 2021, MRI. (Id.) He said the MRI showed some inflammation in the knee, a questionable ACL strain, a possible tear in the medial and lateral meniscus, effusion and a Baker’s cyst. (Id.) He said that bone marrow edema from the fall and contusion was pretty obvious. (Id.)

When asked whether he agreed with Dr. Edwards’ diagnosis of lateral compression compartment syndrome, Dr. Stahle stated: “I’m sure she had pain in the lateral compartment, so I don’t know what he found on his exam or what her exam was like before I saw her, so I think that was part of it.” (Id.) He said that he would defer to Dr. Edwards’ examination and notes for the diagnosis of lateral compression compartment syndrome. (Id.) He said that is not a diagnosis he makes in his practice. (Id.) However, he thought surgery was the logical next step after six or seven months of conservative care, cortisone and therapy. (Id.)

In many instances throughout Dr. Stahle's testimony, he was asked about things that may have been contained in the Petitioner's medical records but was unable to recall "off the top of his head" without looking at the records. (Id.) He was not asked to look at the records again. (Id.)

Regarding his disability rating, Dr. Stahle testified it was "partially" based on the AMA Guides to the Evaluation of Permanent Impairment. (Id.) He said he has not had training on the guides but has been giving such ratings for more than 20 years. (Id.) He then stated that he did not use the guides but assigned a value based on pain, continued weakness and how the condition affects the Petitioner's function. (Id.)

As to back pain, Dr. Stahle testified that it is commonly seen when someone has a knee injury and an altered gait. (Id.)

The Petitioner testified that she developed back pain from an altered gait resulting from the knee injury. (T. 25) She said the injury and treatment put "a toll on her hip," and that she has a hard time exercising. (T. 43) She said that because of how she stands and walks, she pinches the nerves in her left hip a lot. (Id.) She said she has to shift her weight because she can't stay on her leg for too long and has trouble sitting for too long because her knee locks up. (T. 25) She said sitting for a long period also causes issues in her back. (T. 26) He said she doesn't have any limitations on how long she can stand or walk but said she was not able to walk as far as she used to or to run. (T. 26-27) She said she tries not to jump because it hurts. (T. 27) She said the surgery improved her condition – being able to bend her knee farther without so much pain – but didn't cure her. (T. 33) The Petitioner acknowledged that she has not sought medical treatment for her knee since October 2022 and has not sought treatment for her low back. (T.41)

The Petitioner did not submit any medical bills at arbitration. Neither Dr. Paik nor Dr. Edwards testified.

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?

A Workers' Compensation claimant bears the burden of showing by a preponderance of credible evidence that his current condition of ill-being is causally related to the workplace injury. citing *Rosenbaum v. Industrial Com.*, 93 Ill.2d 381, 386, 67 Ill.Dec. 83, 444 N.E.2d 122 (1982).

A causal connection may be based on a medical expert's opinion that the injury "could have" or "might have" been caused by an accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222, 1226, 75 Ill. Dec. 663 (1983). However, expert medical evidence is not essential to support the Commission's conclusion that a causal relationship exists between a claimant's work duties and his condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911, 66 Ill. Dec. 347 (1982). A chain of events suggesting a causal connection may suffice to prove causation. *Consolidation Coal Co. v. Industrial Comm'n*, 265 Ill. App. 3d 830, 839, 639 N.E.2d 886, 892, 203 Ill. Dec. 327 (1994).

Expert testimony shall be weighed like other evidence with its weight determined by the character, capacity, skill and opportunities for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Commission*, 309 Ill. 91, 138 N.E. 211 (1923). The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert's opinion. *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Id.* Expert opinions must be supported by facts and are only as valid as the facts underlying them.

In re Joseph S., 339 Ill. App. 3d 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003). A finder of fact is not bound by an expert opinion on an ultimate issue but may look “behind” the opinion to examine the underlying facts. *Id.*

The parties agree that the Petitioner suffered an injury in the accident. The question is the nature of that injury – specifically, whether she suffered an ACL sprain and prepatellar bursitis as PA Mason diagnosed, symptomatic lateral patellar compression syndrome and traumatic prepatellar bursitis as Dr. Edwards diagnosed, or a prepatellar contusion with reactive posttraumatic prepatellar bursitis as Dr. Farley concluded.

Dr. Farley credited Dr. Edwards’s findings to the Petitioner having a tilted patella due to her being female. He did not believe she had lateral compression compartment syndrome because there was not enough cartilage loss to make her knee symptomatic. Although he said patellar dislocation could occur from trauma, he said lateral compression compartment syndrome could not. Dr. Farley explained the rationale for his opinion that the accident did not cause lateral compression compartment syndrome. The bases for his opinion may not be overly compelling, as he did not examine the Petitioner before her surgery or review the MRI films. However, Dr. Edwards did not testify to explain his findings to tip the scale to meet the burden of proof. Dr. Stahle’s opinions were of no help to this inquiry. He, too, did not examine the Petitioner before the surgery. He is not a knee surgeon. He provided no explanation as to why Dr. Edwards’ diagnosis would be appropriate but, instead, deferred to Dr. Edwards.

Circumstantial evidence points to the Petitioner’s injury as being more serious than a contusion and bursitis. The Petitioner had no prior knee problems, and her condition did not return to baseline after conservative treatment that Dr. Farley opined should have been sufficient. However, without an expert’s explanation, this Arbitrator cannot find that it was more likely than

not that the Petitioner suffered from the condition Dr. Edwards diagnosed. The Arbitrator finds that the question of whether a specific medical condition existed in this case cannot be proven on circumstantial evidence alone.

As to whether the accident caused an aggravation of the Petitioner's low back condition due to her walking with an altered gait, there was no evidence – other than the Petitioner's statements – that it did. The Arbitrator also notes that the Petitioner's Application for Adjustment of Claim does not claim a back injury.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proving by a preponderance of the evidence that the accident of September 30, 2021, caused a contusion and bursitis to her right knee but did not meet her burden of proof that the accident caused lateral compression compartment syndrome or a low back 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?

The Respondent has agreed to be liable for medical bills incurred up to March 14, 2022.

Under §8(a) of the Act, a claimant is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a claimant's injury. The claimant has the burden of proving that the medical services were necessary, and the expenses incurred were reasonable. *City of Chicago v. Illinois Workers ' Compensation Commission*, 409 Ill. App. 3d 258,267 (1st Dist., 2011). An employer's liability for benefits cannot be based on guess, speculation or conjecture. *Illinois Bell Telephone v. Industrial Commission*, 265 Ill.App.3d 681, 638 N.E.2d 207 (1994).

For the reasons stated above regarding causation – most importantly the lack of testimony from Dr. Edwards – the Arbitrator cannot find that the medical expenses incurred after March 14,

2022, were reasonable and necessary. In addition, the Petitioner did not submit any medical bills at arbitration. An award of medical expenses under these circumstances would be speculative.

Therefore, an award of medical expenses incurred after March 14, 2022, is denied.

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

According to the Request for Hearing (AX1), the Petitioner seeks TTD benefits from October 1, 2021, through October 23, 2022, following her release to work without restrictions by Dr. Edwards. The Respondent disputes TTD after March 14, 2022.

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

A claimant reaches MMI when he is as far recovered as the permanent character of his injury will permit. *Nascote Industries v. Industrial Comm'n* 353 Ill. App. 3d 1067 (Citing *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118 (1990)). In determining whether the claimant has reached MMI, a court may consider such factors as a release to return to work, and medical testimony or evidence concerning the claimant's injury, the extent thereof, and most importantly, whether the injury has stabilized. *Id.*

Dr. Farley testified that the Petitioner would have been at MMI after an MRI, a course of physical therapy and an intraarticular injection. The Petitioner underwent the injection on February 14, 2022. She finished physical therapy on March 7, 2022. On March 14, 2022, she was still experiencing symptoms, and Dr. Edwards recommended surgery. A determination that MMI occurred on any of these dates is speculation, as Dr. Farley did not examine the Petitioner at any of those times. His examination occurred on July 5, 2022, at which time he determined the Petitioner to be at MMI.

Therefore, the Arbitrator finds that the Petitioner was entitled to TTD benefits from October 1, 2021, through July 5, 2022, for a total of 39 and 5/7 weeks. The Respondent is entitled to a credit of \$12,025.93 for TTD benefits paid.

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

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

(i) **Level of Impairment.** Dr. Stahle gave a disability rating of 30 percent of the right knee. Although he said this was "partially" based on the AMA Guides, it was apparent that he did not consider the Guides but only his experience. The Arbitrator gives this factor little weight.

(ii) **Occupation.** As an early childhood teacher, the Petitioner's occupation involved kneeling and squatting. After her release by Dr. Edwards, she was able to return to this occupation but left her job due to issues unrelated to her injury. The Petitioner did not testify to a current occupation. The Arbitrator places some weight on this factor.

(iii) **Age.** The Petitioner was 44 years old at the time of the injury. She has several work years left during which time she will need to deal with the residual effects of the injury. The Arbitrator places significant weight on this factor.

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

(v) **Disability.** The Petitioner testified that she still experiences pain and locking in her knee. Her other complaints were related to her back. The Arbitrator puts some weight on this factor.

Therefore, the Arbitrator finds the Petitioner's permanent partial disability to be 10 percent of the right leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021005
Case Name	Brett Pickrel v. Smithfield Foods
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0388
Number of Pages of Decision	20
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Todd Strong, Ryan Meikamp
Respondent Attorney	Michael Brandow

DATE FILED: 9/16/2025

/s/ Christopher Harris, Commissioner

Signature

22 WC 21005

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRETT PICKREL,

Petitioner,

vs.

NO: 22 WC 21005

SMITHFIELD FOODS,

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, notice, causal connection, the reasonableness and necessity of the medical treatment and charges, temporary total disability, and permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. For reasons stated below, the Commission corrects the clerical error contained within the Arbitrator's Decision and denies Respondent's Motion to Dismiss filed February 18, 2025.

In his conclusions of law and under the order section of the Decision, the Arbitrator found that Petitioner failed to provide timely notice of his injury as required under Section 6(c) of the Act. In the findings section, however, the Arbitrator inadvertently stated that timely notice was provided. The Commission corrects this scrivener's error to reflect that timely notice was not given to the Respondent, consistent with the Arbitrator's conclusion and order.

Respondent filed a Motion to Dismiss, arguing that Petitioner failed to sign the Petition for Review filed on December 24, 2024. In response, Petitioner contends that the Petition for Review was timely filed and complied with the Act and Rules, despite missing the signature. In *Shafer v. Ill. Workers' Comp. Comm'n*, 2011 IL App (4th) 100505WC, the Court noted that

22 WC 21005

Page 2

the Act, which governs petitions for review filed in the Commission, does not prescribe any specific requirements regarding the form of petitions for review. See 820 ILCS 305/19(b). It merely requires that petitions for review be filed within 30 days and that they "contain a statement of the petitioning party's specific exceptions to the decision of the arbitrator." *Id.* The Act imposes no other requirement as to the content of such petitions. Here, Petitioner's Petition for Review contained a statement of specific exceptions to the decision, along with Petitioner's attorney's name, address, phone number, and attorney code. Petitioner subsequently filed an amended Petition for Review that included his signature. As the original Petition for Review, filed December 24, 2024, complied with the Act and was timely filed, Respondent's Motion to Dismiss is denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 23, 2024 is hereby corrected as stated above and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent's Motion to Dismiss filed February 18, 2025 is hereby denied.

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

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

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.

September 16, 2025

CAH/tdm
d: 9/11/25
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	22WC021005
Case Name	Brett Pickrel v. Smithfield Foods
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Kurt Carlson, Arbitrator

Petitioner Attorney	Hania Sohail
Respondent Attorney	Michael Brandow

DATE FILED: 12/23/2024

/s/ Kurt Carlson, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 17, 2024 4.16%

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
19(b) & 8(a)

Brett Pickrel

Employee/Petitioner/ info@stronglawoffices.com

v.

Case # **22 WC 021005**

Smithfield Foods

Employer/Respondent/ mbrandow@stephenkellylaw.com

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Kurt Carlson**, Arbitrator of the Commission, in the city of **Peoria**, on **September 27, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **10-15-21**, 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 **\$46,030.92**; the average weekly wage was **\$885.21**

On the date of accident, Petitioner was **35** years of age, *single* with **0** dependent children.

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 **\$17,690.40**.

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

ORDER

- Petitioner's claim for benefits is denied as Petitioner failed to prove notice, accident and causal connection required under the Act. Likewise, prospective medical in the form of left shoulder surgery prescribed by Dr. Rhode 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.

Kurt A. Carlson

Signature of Arbitrator

December 23, 2024

Findings of Fact

Direct Examination of Petitioner - Brett Pickrel

Petitioner, Brett Pickrel (35), is currently employed with Respondent, Smithfield (meat processing) where he worked as a “rib puller” in the slaughterhouse and was hired in July of 2021.

On direct exam, he stated that pork meat would come down the line after it was cut from the backbone and then somebody across from him would pull the backbone. He would have to cut the rib and the riblet off the and then either flip it or let it go down the conveyor belt. (TR. 10.) A brief video of the action on the line is in evidence (RX #6). It shows that the meat to be cut was at the waist level. Stated another way, it would be cut at table level if one were standing up. In any event, Petitioner initially estimated the meat pieces to weigh from 30 to 40 lbs. and consisted of the rib, the loin and the riblet. Petitioner would hold the knife all the time in his right hand. When the meat comes to him, he would grab the end of the piece of meat and pull with his dominant hand to make the first cut. He then had to create another cut of meat by slicing into it again. At some point, you must pull the rib and cut; then flip it over to throw the product down the chute. When you to flip it, you have to pull it to you with your left hand and then you use your dominant hand to flip the loin, so you're pulling it to you with your left to flip it. (TR13.) (RX #6)

Petitioner estimated that cut anywhere between 1,200 to 4,000 ribs a day. (TR14). All witnesses agreed that the work at Smithfield was repetitive. All agreed that the action in the video was accurate, but there was some disagreement about the pace of work.

When Petitioner began working at Smithfield, they were understaffed because of the COVID-19 pandemic. Three people were supposed to work as a team of rib pullers. If three people are working the line, you would do one third of the work. In July of 2021, he was working second shift. There were two people working. He stopped being a rib puller in October or November of 2021. (TR16- 17). There were periods of time in which worked by himself, as Smithfield was understaffed. (TR17).

Prior to working for Smithfield, he worked in construction or roofing. He had no issues with either of his shoulders. He never sought any medical treatment for his shoulders. (TR17).

While performing the job as a rib puller, Petitioner he noticed, at night, a little pain in the left arm, like a pinched nerve type of sensation. He stopped working as a rib puller because he bid out to work another job (maintenance) at Smithfield. (TR 17-18)

He admitted he did not report his shoulder pain to anyone at Smithfield in October nor November of 2021.

Initial Medical Treatment

On November 9, 2021, Petitioner went to the emergency room at OSF – St. Mary in Galesburg for headaches, migraine issues and shoulder pain. (TR 20) (PX #2) The Arbitrator notes that this date was a Tuesday and Petitioner arrived at the ER at about 1 am. There is nothing in these medical records to indicate that Petitioner’s shoulder pain was work-related. Petitioner’s primary

complaint was for a migraine headache, but bilateral shoulder x-rays were prescribed and performed. (PX #2)

Petitioner continued to work the maintenance job until Smithfield until he went returned to Smithfield rib-pulling around March of 2022. He testified that he still had shoulder pain, but he wasn't working alone on the line this time. Smithfield had hired more employees to help.

On March 8, 2022, Petitioner sought medical attention at OSF – Holy Family in Monmouth for a migraine headache and then again later that month for after a slip and fall at home. Petitioner complained of right sided (chest) pain only. (RX #3) There were no complaints to the shoulders and there is nothing in records about any work activity.

On April 25, 2022, Petitioner sought medical attention for ear pain. (RX #3) There were no shoulder complaints.

July 6, 2022 – Bilateral Shoulder MRIs

Petitioner sought medical care on July 6, 2022 (Wednesday) at 9:00 am at Holy Family Medical Center in Monmouth complaining of bilateral shoulder pain. Petitioner's primary care physician Tracie Platcher, -CNP ordered a series of MRIs for both of his shoulders and neck. (PX #3 p.16-18)

MRI Results

Right shoulder	mild tendinopathy – no discrete tear of cuff, possible labral tear.
Left shoulder	50% cuff tear (infraspinatus tendon)
Cervical spine	mild degenerative changes

From July 7 to July 11, 2022, Petitioner called Tracie Platcher's office several times office asking, "if there was a way to tell when injuries occurred to shoulders? Asking because if it occurred in the past year states it is probably work-related." Dr. Platcher deburred, writing that "it is hard to say when the injury may have occurred." (PX #4) She then referred him to Dr. Craig Wilson, an orthopedic specialist.

July 19, 2022 – Occupational Health

Petitioner sought medical attention at Occupational Health and stated he first noticed bilateral shoulder pain in October of 2021. He was unsure how he hurt them. (PX #4)

Dr. Craig Wilson (orthopaedic treater) – July 22, 2022

Petitioner first sought medical treatment with Dr. Wilson on this date and stated that his bilateral shoulder pain started in October 2021, he denied having an injury and stated it was from wear and tear. (PX #5 p.14) The left side was worse than the right. He also stated that he works at Smithfield as a meat processor. Petitioner was given bilateral steroid injections that day by Dr. Wilson, who also reviewed the MRI imagery.

Doctor Wilson also prescribed physical therapy and stated that if conservative care proved to be unhelpful, surgery for the labral tear (right) may be warranted with Dr. Below.

There are no causal connection statements in Dr. Wilson's records.

Date of Accident – October 15, 2021

Smithfield denied Petitioner's medical treatment under workers' compensation. (TR. 25- 26). Petitioner sought legal representation and filed an application for adjustment of claim on August 10, 2022 stating that the work accident was October 15, 2021. Verbal notice was claimed, but no date was volunteered on the form. (PX #1)

Dr. Blair Rhode – (orthopaedic treater)

Petitioner obtained legal representation who referred him to see Doctor Blair Rhode, another orthopedic specialist. (PX #10) Dr. Rhode examined the Petitioner on August 14, 2022 and gave a causal connection statement in favor of his patient stating "symptoms are secondary to an injury at work." He further described it as "overuse." (PX #10)

Petitioner summarized the treatment he received from Doctor Rhode as obtaining cortisone shots and a recommendation for left shoulder surgery. (TR 26). He also received pain medication and anti-inflammatories. He ordered another MRI because he was still working and his symptoms were getting worse. He was placed on restricted duty. At that time, Smithfield would accommodate the restricted duty when they were able. He was taken completely off work on January 18th of 2023. (TR 29).

Petitioner has not gone back to work. He has not received temporary total disability benefits under The Illinois Workers' Compensation Act but did receive short-term disability from Smithfield starting in January of 2023. At some point, it's stopped around July of 2023.

Petitioner reviewed a video which showed basically his job of pulling the rib, cutting it and flipping the ribs. He testified that in his opinion the video did not truly inaccurately depict the pace of the job. (TR 33). His testimony that the pace shown on the video was slower.

On cross-examination, he testified that besides the pace shown on the video, the video was accurate depiction of his job. (TR 36-37).

He testified that currently whenever he does anything repetitive his shoulders would hurt. He continuously had pain even if not doing anything. He really doesn't do a lot because he's not trying to make it worse. (TR 40)

He has incurred medical bills for treatment which have not been paid. The bills tabulated in Petitioner's Exhibit 12 remain outstanding. (\$150,971.20) (TR 41.)

He testifies he believed Dr. Rhode reviewed a different video. (Doctor Rhode testified he'd never reviewed a video of the job activities)

Cross examination of the petitioner

Petitioner testified that when he worked as a construction laborer, he would build walls and do roofing. He stated it was not really a heavy labor job. He stated he never really did anything super heavy besides moving bundles of shingles. He did work with air pneumatic tools and with hammers. He said he never had issues with his shoulder. (TR50.)

He denied that the rib-puller lines were slowed down depending on the number of people who were working. He denied that his trainer was Michelle Wilson and that she would be lying if she said she was his trainer. He stated she would come up there occasionally, but most of the time there were other trainers.

Redirect testimony

He agreed that he probably received \$17,418.24 in short term disability. (TR 54)

Direct testimony of Lakota Alyn Fire Thunder

He appeared pursuant to a subpoena. He had previously been employed at Smithfield on two instances. He was employed January of 21 to January of 22 and July of 22 to July of 23. His job title was General Production. He was a tender puller. He agreed that the petitioner began working there sometime in July 2021. He testified from July to approximately October/ November of 2021 he was able to see the petitioner working from his job location. He stated from his position at no more than 20°, he could look out in his direction and see the line. He stated he had a good understanding what Mr. Pickrell did as a rib-puller (TR 60.)

He could observe the petitioner's job which he had done on several occasions. There would also help him do his job because he had been working by himself for an extended period of time.

He reviewed the job video. He stated based upon what he saw, he could not tell when the video was taken. He stated he's not sure it's realistic to the circumstances that they were working under at the time. The line spacing seemed to be a bit slower in the video, but he stated it was realistic history with the job looked like. That's how the action looked like. (TR 67.)

Cross examination of the witness

He agreed that the video was accurate except for the pace of the line. It was not the job he's performed at Smithfield as he only fill in. Where he worked was about 20 or 25 feet away with obstacles in the way. (TR 73.)

He is currently working at Burger King. He was terminated from Smithfield due to a failed drug test. (TR 74) He indicated he suffers from a mental health issue which affects his concentration. (TR 75)

Direct testimony of Chance Klingler

He worked at Smithfield from fall 2019 until November of 2022. During that time, he worked as a rib-puller. He considered himself the trainer of the petitioner. The petitioner started working sometime in July 2021. He worked as a rib-puller until October, November of 2021. (TR79-80)

During this time period, because of COVID and everything, the staffing just more or less tanked and jobs that would have three to four people went down to two, sometimes one.

He reviewed the video of the job activities and stated that it showed about the line speed if three people were doing the job. He indicated they ran much faster sometimes.

He stated Smithfield rarely slowed down the line.

Cross examination

He has not worked there since 2022. He was terminated for violation of policy, threatening an employee (TR 87) He considers himself a friend of petitioner. He indicated he was aware that Petitioner had worked construction in the past.

He indicated that Michelle Wilson was one of the trainers but more so by document.

Direct testimony of Michelle Wilson

She has been employed at Smithfield Foods since August of 2007. Currently she is the safety director. Prior to that she was on the job trainer for about 8 years. She started that position around 2001, 2012. She was one of the trainers for the petitioner. She testified she was a hands-on trainer.

She was required to do written and physical training on the line and in the office. He was one of the new hires so she was assigned to help train him as they rib puller. (TR91-92)

When he was hired in July of 2021 there was staffing shortage due to COVID. She indicated she's familiar with job of a rib-puller.

She reviewed the video of the job. She indicated the speed of the line what is the normal speed for three people. If there were only two people on the line the supervisor would turn it down according to the number of employees so it would be slower if it's one or two (TR 94) She is still working at Smithfield.

Cross examination of Wilson

She is not the supervisor nor was she the person responsible for slowing down the line. She indicated in 2001, the percentage of short staffing was maybe 40 to 45%. She had a specific recollection of the petitioner from July of 21 going into October to November of 21. She would observe him multiple times during the day.

Redirect examination of Wilson

She testified that the line was slowed down when only one person was working (TR 98).

Direct Testimony of Eddie Miller

Mr. Miller has been employed at Smithfield for 12.5 years. For three years he was in general production and then he was a utility butcher until 2017. In 2022 he went to loin boning. That included the rib puller section. He reviewed the job video and noted that the speed of the line is showing on the video was correct for three people.

He indicated he was working in Smithfield during the COVID-19 pandemic. At that time they were short on help so they would slow the line down.

At normal speed the three people would normally process 750 loins an hour. That's what the video showed. There's two per job it would run 500 an hour and it's one it would run 250 per hour. The video is an accurate representation. (TR 102-103)

Cross examination of Miller

He stated he worked 2nd shift. He never worked directly with the petitioner, but he was his manager. He agreed that during COVID there's a shortage of staffing. Probably 40%. He stated he did not know the exact number. Every job there was repetitive. (TR 105-106)

He did not believe it was forceful gripping as the workers are trained not to grip the knife forcefully. (TR 106)

Direct Testimony of Cosmo John

He is employed by Smithfield Foods and has worked there since 1993. He had worked in the department where the rib-pullers are (TR 113) He worked there for six to seven years. When he worked as a rib-puller three people usually work the line at the same time. He looked at the job video and stated the speed on the video show the line when 3 people are working. He then explain how the job was performed (TR 115-TR 116).

Cross examination

Mr. John was the Superintendent for the 2nd shift in 2021 and 2022. During that time, they were pretty short on employees. As the Superintendent for second shift, he had to oversee all operations including maintenance, have meetings new hires, and basically took care of everything on 2nd shift. He would be on the floor all night. He would observe the line. He was not the direct supervisor of the petitioner. He agreed there were times the petitioner was working on the rib-pulling line by himself. He indicated it was at a reduced speed when he did so. (TR 121-122) He agreed that when the line was slowed down; production slowed as well.

Direct Testimony of Jennifer Hathaway

Ms. Hathaway is currently working at West Rock, starting there 3 or 4 weeks ago. She had previously worked at Smithfield. She started working there in May of 2021. She worked in the safety and medical department. She would fill out incident reports, help supervisors with their portion and would help perform first aid treatment. She would go out and walk around the floor and perform inspections. (TR 124)

She was subpoenaed come to testify at the hearing. She's familiar with the petitioner. He worked in the loin bone department on 2nd shift. He came up to the medical department. She was working 2nd shift. (TR 12)

She recalled a conversation with the petitioner on or about June 17th, 2022, in the medical department at Smithfield. She recalled what was said during the conversation. She had called him up to the medical department to see how he was feeling because he was complaining of sore shoulders. He wanted to make an appointment with the doctor to get an MRI. Petitioner stated it was not work-related at Smithfield. She told him to check Bob to make sure that was ok. He stated he began having problems when he was a roofer. (TR 125-126)

Cross examination of Hathaway

She testified that she kept records in the OHM system. Petitioner's attorney then made a statement that she wanted the arbitrator to know that no record of what the witness is testifying too was submitted into evidence by the respondent.

She indicated she had a recollection of the petitioner because it was a unique interaction. He stated he did not hurt his shoulders at Smithfield, and he wanted to see his own doctor. (TR 128-129)

Medical Treatment

Dr. Rhode examined the Petitioner for bilateral shoulder pain on August 17, 2022. (PX #10) Those records reflect that symptoms “are secondary to an injury at work. Overuse injury which began in October of 2021. Employed as a rib puller and stated he began having increasing shoulder pain. He separated ribs and then throws then and states his left shoulder in the most painful. However, over the last 9 months his right shoulder had become increasing painful. He had seen an orthopedic surgeon and had an injection performed with limited success. Assessment was pain in the left shoulder, strain of muscle(s) and tendon(s) both shoulder and incomplete rotator cuff tear or rupture of the left shoulder, not specified as traumatic. PT recommended and he was place on modified duties.

On October 12, 2022, Dr. Rhode wrote that “Petitioner says he was cutting filets. He uses his right to caught (cut) and tosses with his left arm.” (PX #10)

On November 9, 2022, Dr. Rhode wrote, “Working light duty, sorting trims. Requires him to lift 10 pounds or less. Occasionally need to push 20-pound objects. Injection given.” (PX #10)

On January 4, 2023, Dr. Rhode wrote, “Waiting on IME and authorization for surgery. Off work.”

On January 18, 2023, Respondent’s Section 12 examination with Dr. Craig Phillips denied medical causation, stating that he did not think the MRI pathology matched his clinical exam nor Petitioner’s complaints. Further Dr. Phillips did not believe that Petitioner’s work activities were related because they were neither overhead nor forceful enough to cause a rotator cuff tear. He viewed the short video of work activity. (RX #1)

On February 1, 2023, the Petitioner told Dr. Rhode that the ribs weighed between 70 to 100 pounds. He would use his left arm to flip the ribs. He would cut 5,000 ribs per day. 6 days/week for 8 to 10 hours. (PX #10)

On March 29, 2023, Petitioner stated the rib weight on the line was 70 to 100 pounds when they came down the line. When he was required to flip them, they weigh approximately 40 pounds. (PX #10)

DEPOSITION TESTIMONY

DR. BLAIR RHODE

Dr. Rhode Direct:

Board certified in orthopedics and sports medicine. (PX #11) He saw Petitioner initially on Augst 17, 2022 for bilateral shoulder pin which he relates to work. He reviewed prior MRIs. The

left one indicated a partial thickness tear. He had a partial tear also on the right but left was worse. Physical therapy was started. He described the petitioner problems as being overuse syndrome. That meant that he did not attribute a single throw, but it built up overtime due to his repetitive exposure at his job activities. He recommended another MRI for the left shoulder which occurred on October 20, 2022. He read it as showing evidence of a partial thickness supraspinatus tear. Conservative measures were to continue until they felt he had failed conservative treatment. He compared the MRI to a prior one in July 2022 noting there was not a significant change. (PX #11)

Dr. Rhode recommended surgery consisting of an arthroscopic decompression with a possible rotator cuff repair on the left. He reviewed the report from Dr. Phillips who performed an IME on January 18, 2023. When questioned about the weights involved in what he was required to lift he stated he agreed with him but further stated:

“I agree. I mean there is obviously multiple different weights, pieces of meat that are manipulated. The patient related that the ribs when they began coming down the conveyor belt weighed between 70 and 100 pounds. I believe they were then subsequently cut into smaller pieces.”

Dr. Rhode said that petitioner expanded on job duties as rib-puller stating:

“He emphasized that he worked the position by himself. He would work three stations. He stated that 20 to 30 ribs would come down the conveyor belt. He would always push the ribs with his left. He had -- as I stated before, the ribs when they came down weighed between 70 and 100 pounds. He would also use his left arm to flip the ribs. He would cut 5,000 ribs per day, six days per week, eight to ten hours per day. He further agreed with the petitioner that he was required to flip the ribs that weighed approximately 40 pounds.

When asked the doctor testified that petitioner did not have any prior left shoulder problems. He disagreed with Dr. Phillips on causation who said there was no causation.

Dr. Rhode on causation stated it was his opinion that:

“I believe that the patient's highly repetitive exposure, cutting up the meat, was causative. I believe that the exposure dose, including the force and repetition, meets my level of causation. I believe that the fact that the patient is right-hand dominant does not affect my opinion. In fact, it's not uncommon that the nondominant hand is the quote/unquote, working hand, the one that's required to do the brute force stuff, while the dominant hand is utilized in a more dextrous form which in this would be the cutting side would be the right but the hand that's doing all the flipping and the grabbing and the pulling and the pushing is going to be the left which I think that the patient aptly described on multiple occasions.”

Further, he testified:

”I think that the pulling, pushing with his left arm, the flipping of the ribs was of sufficient force especially with the number of repetitions that he was required to do per day.”

The doctor then said he had treated many patients from Tyson so he says he is familiar with the job the petitioner performed.

His final diagnosis was bilateral partial thickness rotator cuff tears. He is recommending left shoulder intervention and continued conservative care for the right.

He testified that petitioner had no prior problems with either shoulder. He initially took the petitioner off work on January 18, 2023, because he suspected a worsening of his symptomology. The fact petitioner worked construction for 10 years does not change his opinion on causation.

Dr. Rhode Cross-examination:

Petitioner performed construction work before which is considered medium-heavy to heavy type job. The job description he relied on to formulate his opinion was somewhat different than the job description relied on by Dr. Phillips. (PX #11)

He was asked if looking at a job video would be helpful responded by saying that it would be more beneficial to look at a job video involving the patient, and as one created by the employer does not necessarily correlate with what the specific employee was required to do. Because it is not unusual for an employer to stage a video. However, he conceded that the video would be helpful as long as it is a true representation of what this specific employee did.

He went on to say he believed the job activities described by the petitioner described as he believed him to be a sincere and truthful person.

He conceded that after the first 2 visits he primarily directed treatment to the left shoulder as that had been his primary complaints.

He conceded that one reason he recommended surgery was because he had failed conservative treatment but admitted he had no PT records in his notes. His version of conservative treatment is activity modification, relative rest, injections, and oral medications.

He claimed he did not know how the petitioner came to see him. He claimed he didn't know if his attorney referred him for treatment. He conceded that he did not know if his job description was accurate or not.

When he changed the restrictions of the petitioner on 1/4/23 he did not know the reason why because it was not documented. (PX #11)

Redirect Examination

When asked if an employer has an incentive to keep work comp claims at a minimum answered:

Yes, from a financial standpoint. He stated he was never provided with a copy of the job video.

Recross Examination

He conceded he never asked for a job video.

DR. CRAIG PHILLIPS

Direct Testimony:

Dr. Phillips is Respondent's Section 12 examiner and is Board Certified in orthopedic surgery. (RX #1) In the course of his practice, he had patients with shoulder issues. Approximately 25% of his practice involves shoulder. He performed an IME on the petitioner on November 23, 2022.

The doctor indicated he received the following history from the petitioner:

"So, he told me that he's right-hand dominant. He had started working at Smithfield Foods as a rib puller from July of 2021. Prior to that he worked in construction for over 10 years. He developed left shoulder pain in early October of 2021. He specifically stated that the pain that he felt was over the -- he didn't say it, but he pointed, and he described it, and I medically transcribed it -- but over the medial left parascapular area. Shortly after that he developed right shoulder pain, which was less intense, but more over the superior shoulder, around the trapezius. He thought it was because he was working in a short-staffed environment. He was working on the line for five weeks by himself." (RX #1)

He saw his primary care physician in February or March of 2022 for his shoulders. And he told me that they obtained MRIs of both his shoulders. His PCP told him he felt he suffered a pinched nerve in the shoulder blade. He reported this to Smithfield. His primary care physician then referred him to orthopedic surgeon Dr. Wilson who told him he had problems with the tendons in his shoulders and injected both shoulders to no benefit. He was primarily describing pain at that point around his shoulder blades. (RX #1)

He was then referred by his attorney to Dr. Rhode, who put him on restrictions and ordered therapy. He did therapy twice a week for about two to three months. Petitioner stated the therapy didn't help. I asked him what he was doing in therapy, and it appeared appropriate. He was doing range of motion stretches and using Thera Bands and a hand bike. He followed up with Dr. Rhode, he felt, two or three times. And at his last visit Dr. Rhode gave him an injection into the left shoulder on November 9th. And he stated that injection also didn't help, but, in fact, was more painful than the previous injection. He was scheduled to see Dr. Rhode in December. Dr. Rhode put him off work, which he said helped his pain somewhat, but it never went completely away. I asked him if he had any prior trauma to either shoulder, which he denied. He was suffering from right paracervical discomfort for many years he felt due to carrying shingles. He told me his pain would come and go there. (RX #1)

When asked about his work activities, the petitioner responded:

"So, he told me he started working at Smithfield Foods on July 21st, 2021, as a rib puller. He told me while he was working as a rib puller, he would work exclusively at waist level. He would use the knife in his right hand to cut the meat and would hold the loin with the left. He would cut the loin with the left. He told me he worked as a rib puller from July 21st, 2021, until late October or early November 2021, and then he was switched to maintenance. He spent a lot of time learning and would do what he described as odds and ends and fix little things. Told me it wasn't heavy. His pain was a little less when he was working maintenance. He was then returned to the floor in January or February of 2022, and his symptoms got worse. He told me he had to cut loins and pull and push and flip loins, which increased his pain. He was working with restrictions. He told me Dr. Rhode placed him on restrictions in September of no use over 10 pounds, which he states did not really help his pain. And then he followed up with Dr. Rhode. He placed him off work for three weeks. He states being off work his pain has diminished but hasn't gone away. He was then returned to work with restrictions of cutting loins and pulling ribs one at

a time. He told me when he's not cutting the meat, he sorts trim, and cuts fillet occasionally, which he feels is similar, but less demanding. I asked him, he stated almost all his activities were at waist level. The only time his arm goes anywhere near the horizontal is when he uses the knife in his right arm to cut the loin, which he starts in a horizontal position and lowers the arm to cut the meat. Told me he works eight to 10 hours a day six days a week. He gets three breaks, two of which are 15 minutes, and a 30-minute lunch break. (RX #1)

He further testified regarding the medical records he reviewed, including the job analysis. This job analysis contained the following information:

“So, his job analysis was reviewed as for a rib puller. So, I basically outlined his activities that basically states that the conveyor belt where the ribs come down is approximately 34 inches high. The pork loin that he cuts weighs approximately 10 to 12 pounds coming down on the conveyor belt. The rib puller reaches forward to position the loin into a cutting position with the non-knife hand and uses a straight knife to slice the ribs. Once they slice the ribs up to two to three pounds, they are dropped into a chute, which is directly in front of them. Long story short, these are light activities and don't require any heavy overhead activities. They seem to be somewhat repetitive.” (RX #1)

He then stated his opinions within a reasonable degree of medical and surgical certainty.

“Yes. So, I note he's a 36-year-old right-hand dominant gentleman. He started working at Smithfield in July of '21 as a rib puller. His activities were exclusively at waist level. He developed pain over the left parascapular area in October of '21 and the superior shoulder to a lesser degree around that time on the right side. Saw his PCP, had MRIs of the shoulder, neck, and x-rays. MRI showed diffuse rotator cuff tendinopathy bilaterally. Partial thickness tear on the left side, possible posterior labral tear on the right. He saw Dr. Wilson, gave him bilateral shoulder injections with no benefit. He was then referred by his attorney to Dr. Rhode who gave him a cortisone injection to the left shoulder with no benefit. He continued therapy with no real benefit. I felt the reason he hadn't obtained benefit from his injections is because his problem wasn't from within the shoulder itself. He had diffuse muscle pain around the left parascapular area and to a lesser degree on the right. I didn't feel the infrastructure was causing his symptoms. His MRI showed diffuse cup tendinopathy, which I didn't feel were related to his work activities. He didn't do any heavy overhead activity. He previously worked in construction for 10 years, which would be a more plausible cause for his rotator cuff pathology assuming he did heavy overhead work there. I looked at his short video, didn't show anything that would stress his rotator cuff significantly. And I felt that based on that short video and what he told me that his work wasn't a cause for his rotator cuff or labral pathology. (RX #1)

His diagnosis and opinion as far as current condition was:

“So, I felt that he had a lot of muscular pain around the shoulder blades and around the shoulder girdle area on both sides. I didn't feel this muscle pain was related to the infrastructure, it was all superficial. He did have MRIs that showed bilateral rotator cuff tendinopathy with partial thickness tear on the left and a possible posterior labral tear on the right, which I did not feel was causing him any symptoms when I examined him. His prognosis was guarded because it was muscular in nature and very unpredictable. His shoulder complaints were not causally related to his work at Smithfield. (RX #1)

Cross-Examination:

He agreed that his review of the MRI report indicates that the petitioner was suffering from rotator cuff tendinopathy with possible labral tear, which can be symptomatic and asymptomatic in both shoulders. However, that is not the source of his pain. He disagreed with the attorney's question when asked if muscular pain usually disappears in a few months, stating it depends on the source. (RX #1)

ADDITIONAL EXHIBITS

Respondent's Exhibit #8 was admitted into evidence as a business record over Petitioner's objection. While it is true that Ms. Hathaway's appears to be created in anticipation of litigation, it was also the kind of report you'd expect as assistant safety director to create.

It is a note dated June 17, 2022 prepared by Jennifer Hathaway stating:

"I had Brett come up to medical so I could follow up with him and see how his shoulder and neck were feeling. While he was here he told me that he was going to get an MRI and told the doctor it was not work related, as he had neck and shoulder issues from a previous job. I told him to hold off on scheduling it so I can double check with Bob Potaczek since he has reported as an injury here as well. Bob said he should go see the doctor on his own since he says it is from a past job." (RX #8)

Petitioner did not rebut the above conversation.

CONCLUSIONS OF LAW

(E) Was timely notice given to the Respondent, Smithfield?

Section 6(c) of the Workers' Compensation Act requires notice be given no later than 45 days after the date of the accident. *820 ILCS 305/6(c)*. There is no dispute that the Petitioner did not advise the employer of his shoulder complaints until sometime after July 22, 2022 and a defective notice was with witness Hathaway in June of 2022, neither date remotely meets the statutory requirement. Petitioner's Application for Adjustment of claim alleges an accident date of October 15, 2021 and the notice deadline would've been on or about November 30, 2021.

Please note the following in Gano Electric Contracting v. Industrial Commission, 260 Ill.App.3d 92, 631 N.E.2d 724, (4th Dist. 1994) where the appellate court held (1) that the purpose of the notice requirement is to enable an employer to investigate an alleged accident, (2) that compliance is accomplished by placing the employer in possession of known facts related to the case within 45 days, (3) that a claim is barred only if no notice is given, (4) that, if some notice has been given, although inaccurate or defective, the employer must show that it has been unduly prejudiced, and (5) that the legislature has mandated a liberal construction of the issue of notice. 631 N.E.2d at 727.

In the present case, there has been no allegation of any notice within 45 days. As a result, Respondent has no duty to show that it has been unduly prejudiced.

Petitioner cites Peoria County Bellwood, 115 Ill.2d 524, 505 NE2d. 1026 (Supreme Ct. 1987) regarding the notice issue, but the analysis in that case was more about the statute of limitations, not notice. Further, Petitioner could amend the accident date when it pleased.

The notice requirement is applicable to repetitive trauma claims, White v. Illinois Compensation Commission, 374 Ill.App.3d 907, 873 N.E.2d 388, (4th Dist. 2007)

The failure to provide the statutorily required notice to the employer is jurisdictional. Thrall Car Manufacturing Co. v. Industrial Commission, 64 Ill.2d 459 (1976). Based upon the foregoing, Petitioner's failure to provide timely notice of his alleged accidental injuries is a bar to his claim for benefits. The Arbitrator expressly finds Petitioner failed to provide timely notice of the alleged work injury to the employer.

In support of the Arbitrator's decision with respect to (C) Accident and & (F) Causal Connection, the Arbitrator finds as follows:

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). In repetitive trauma cases, issues of accident and causation are intertwined. Therefore, a review of the evidence allows both issues to be resolved together." Boettcher v. Spectrum Property Group and First Merit Venture Realty Group, 97 W.C. 44539, 99 I.I.C. 0961.

The Arbitrator finds that Petitioner's job activities were repetitive but did not cause his bilateral shoulder condition. It was agreed by all witnesses that the work-activities of rib-puller at Smithfield were repetitive. The parties agreed that MRI pathology was accurate.

Nevertheless, the Arbitrator finds that the expert testimony of Respondent's Section 12 examiner, Dr. Craig Phillips to be more credible than Petitioner's treating physician, Dr. Blair Rhode for the following reasons.

Petitioner's injuries are characterized as a rotator cuff or labral tears, which occur most often as the result of forceful overhead arm motion. (RX #1 p.35-36) Petitioner's work activities as a rib-puller were not overhead, instead they were at waist level and as a result, do not activate the rotator cuff. (RX #1 p.14) Nor was the activity as forceful as Petitioner stated to Dr. Rhode, who testified that when Petitioner was required to flip meat, it weighed 40 pounds. (PX #11 p.35) The job activity video demonstrates that Petitioner's weight estimate was an exaggeration. (RX #6) In contrast, Respondent's examiner, Dr. Phillips, was more accurately informed about the weight of the meat being processed – about 10-12 pounds (RX #1 p.20)

The Arbitrator notes that Petitioner originally may have told his doctors that the meat weighed 70-100 lbs. and that he worked on the "kill floor" (PX #10) (PX #5) but these facts seem inaccurate under closer scrutiny.

While it could be argued that the video mischaracterized the pace of line, that component of the causation analysis is far less compelling to the trier of fact than the lack of forceful, overhead

activity in the record. This was not a carpal tunnel syndrome claim, cubital tunnel nor epicondylitis claim which are classic repetitive trauma injuries.

There are additional collateral matters regarding expert credibility here favoring Respondent. The Arbitrator notes Dr. Rhode's persistent prescription for Norco may fall outside of what one would consider the regular course of treatment for this type of injury. (PX #11 p.27) Then there is the breathtaking amount for prescription medication (Persistent Labs, Persistent Rx and Rx Development), as an additional cause of wonder. (PX #12) Finally, Dr. Rhode's vague recollection about whether the patient was referred to him by an attorney seemed unnecessarily evasive as to diminish his ability to persuade the court as well. (PX#11 p.31)

In addition to the above, there is compelling evidence that Petitioner injured his shoulders working at an earlier job. Jennifer Hathaway testified credibly that Petitioner told her that he injured his shoulder working as a roofer and not at Smithfield. Hathaway no longer works at Smithfield and had no apparent incentive to mischaracterize the conversation. (TR 125-126) To the trier of fact, this work activity seems to be a more competent cause of rotator cuff pathology.

In theory, the Petitioner's work activities could have permanently aggravated, accelerated, or exacerbated a pre-existing pathology, no such causal connection statement is in the record.

Finally, Petitioner's original medical care provider was invited to establish causal connection and demurred. Tracie Platcher – CNP. (PX #4)

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

Based on my findings on accident, causal connection and notice the claim for payment of medical bills is denied.

(K) Is Petitioner entitled to any prospective medical care?

Based on my findings on notice, accident and causal connection, the claim for prospective medical is denied.

(L) What temporary benefits are in dispute?

Based on my findings on notice, accident and causal connection, the claim for TTD benefits is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001812
Case Name	Dawn Winder v. Piatt County Sheriff's Office
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0389
Number of Pages of Decision	14
Decision Issued By	Christopher Harris, Commissioner

Petitioner Attorney	Muriel Collison
Respondent Attorney	Daniel Arkin

DATE FILED: 9/16/2025

/s/Christopher Harris, 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

DAWN WINDER,

Petitioner,

vs.

NO: 22 WC 1812

PIATT COUNTY and PIATT COUNTY
 SHERIFF'S OFFICE,

Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission first affirms the Arbitrator's award of maintenance benefits from November 29, 2023 through March 17, 2024. The Commission finds the awarded period reasonable and supported by Petitioner's credible testimony regarding her job search efforts. The job search logs and related medical records from Dr. Huang's office (her primary care physician) also corroborated Petitioner's testimony. Petitioner began working as a Deputy Clerk for the Piatt County Assessor's Office on March 18, 2024 after completing two interviews, a physical and a drug test in early March 2024. Although Respondent was critical of Petitioner's overall job search, its vocational expert, Julie Bose, conceded that Petitioner had targeted appropriate positions during her search and that she obtained a suitable job that she could perform within her permanent restrictions.

However, pursuant to Section 8(a) of the Act and case law, once Petitioner started her new job on March 18, 2024, her entitlement to maintenance benefits ceased, *i.e.*, she was neither engaged in a prescribed vocational rehabilitation program nor conducting a 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. The Commission therefore vacates the award of maintenance from March 18, 2024 through November 12, 2024. Petitioner would also not be entitled to any temporary partial disability (TPD) benefits during the aforementioned periods as Dr. Fletcher had discharged Petitioner at MMI on May 25, 2023.

The Arbitrator additionally determined that penalties and attorney fees under Sections 16, 19(k) and 19(l) were warranted for Respondent's non-payment of maintenance benefits. The Commission agrees but modifies the Arbitrator's award to conform with the revised maintenance period from November 29, 2023 through March 17, 2024.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 2, 2025 is hereby modified as stated and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner maintenance benefits of \$583.83 per week for 15 5/7 weeks (110 days), commencing November 29, 2023 through March 17, 2024, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of maintenance benefits from March 18, 2024 through November 12, 2024 is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(l) of the Act in the amount of \$3,300.00 (\$30 per day x 110 days).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner penalties pursuant to Section 19(k) of the Act in the amount of \$4,585.99 (50% of \$9,171.97 – maintenance award).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner attorney fees pursuant to Section 16 of the Act in the amount of \$917.20 (20% of \$4,585.99 – 19(k) penalty amount).

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

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

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

September 16, 2025

/s/ Christopher A. Harris
Christopher A. Harris

22 WC 1812

Page 3

CAH/pm

O: 9/11/25

052

/s/ Maria E. Portela

Maria E. Portela

/s/ Marc Parker

Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001812
Case Name	Dawn Winder v. Piatt County Sheriff's Office
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Muriel Collison
Respondent Attorney	Daniel Arkin

DATE FILED: 1/2/2025

/s/ Adam Hinrichs, Arbitrator
Signature

INTEREST RATE WEEK OF DECEMBER 31 2024 4.14%

STATE OF ILLINOIS)
)
)
)
 COUNTY OF CHAMAPAIN)

- ☐ 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

Dawn Winder
 Employee/Petitioner

Case # **22** WC **001812**

v.

Piatt County and Piatt County Sheriff's Office
 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 **11/12/2024**. 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 **01/05/2020**, Respondent **was** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$45,538.48**; the average weekly wage was **\$875.74**.

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

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

Respondent **has 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, pursuant to the medical fee schedule, in the amount of **\$17,195.54**, as provided in Sections 8(a) and 8.2 of the Act.

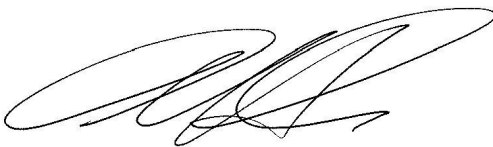
Respondent shall pay Petitioner maintenance benefits of **\$583.83/week for 15 4/7 weeks**, commencing 11/29/2023 through 3/17/2024, as provided in Section 8(a) of the Act. Respondent shall pay also Petitioner maintenance benefits of **\$233.83/week for 34 1/7 weeks**, commencing 3/18/2024 through 11/12/2024, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **\$525.44/week for 200 weeks**, because the injuries sustained caused a **40% loss** to Petitioner's body as a whole, as provided in Section 8(d)2 of the Act. Respondent shall pay Petitioner compensation that has accrued from December 14, 2022 through November 12, 2024, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay fees and penalties of **\$3,616.55**, as provided in Section 16 of the Act, **\$8,082.73** as provided in Section 19(k) of the Act, and **\$10,000.00** as provided in Section 19(l) of the Act.

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

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



Signature of Arbitrator

JANUARY 2 2025

FINDINGS OF FACT

Petitioner testified that she had been employed at Piatt County Sheriff's Office for 20 years and was working as a correctional officer, and kitchen manager, on January 5, 2020. She testified that she earned \$20.26 per hour and further that she worked overtime as well working as her regular hours.

Prior to January 5, 2020, Petitioner testified that she did not have any problems with her left wrist, forearm or thumb, or difficulty performing her assigned job duties. While serving an inmate breakfast through a "chuckhole" in the door, Petitioner's left arm was grabbed by the inmate. Petitioner testified that her arm began to hurt and started to swell, resulting in the need for medical treatment.

Petitioner initially treated in the emergency room at Kirby Medical Center. She was released to return to work in a light duty capacity, which Respondent accommodated. Petitioner then followed up with Dr. Evelyn Huang, her family doctor, and was referred to orthopedics at Christie Clinic. Petitioner testified that she saw Dr. David Martin Anderson at Christie Clinic.

Petitioner testified that she was sent to Dr. David Fletcher by Respondent, and that he referred her to Dr. Lawrence Li for further care. The treatment Petitioner received with Dr. Li began with physical therapy, and later in Petitioner arthroscopic surgery on her left wrist on July 17, 2020. Petitioner testified that this surgery did not help with her pain or symptoms.

Petitioner subsequently underwent additional surgeries with Dr. John Fernandez on October 8, 2021 and July 15, 2022, consisting of a left ulnar shortening osteotomy with revision arthroscopy and a nerve decompression; and an ulnar revision. Petitioner also testified that these surgical procedures also did not resolve her symptoms or complaints.

In addition to treatment with Dr. Fernandez, Petitioner was also examined and treated by Dr. Charles Bush-Joseph for a frozen shoulder. Dr. Bush-Joseph's treatment consisted of two injections and physical therapy. Petitioner did not undergo any surgery or other treatment relative to her shoulder. Petitioner testified at trial that her shoulder is now back to where it should be and that she is no longer having any complaints or problems with her shoulder.

In addition to the treatment with the above providers, Petitioner testified that Dr. Fletcher had referred her to a therapist due to problems with her emotions and fears of being re-injured. Petitioner treated for a short period of time with the therapist which resulted in resolution of this issue.

During the periods of time Petitioner was undergoing the above medical treatment, she continued to work for Respondent in a modified/light duty capacity, with Respondent accommodating her work restrictions.

Petitioner testified that her continued follow-up treatment with Dr. Fletcher resulted in him placing her at MMI as of December 14, 2022. An FCE was ordered at that time to determine the extent of any permanent restrictions. Dr. Fernandez agreed with the recommendation for an FCE when he examined Petitioner on January 12, 2023.

The FCE was performed on January 13, 2023. The FCE found that Petitioner could not return to work as a correctional officer due to permanent restrictions involving her left arm. The FCE determined that Petitioner

could continue working within a sedentary/light physical demand level with significant restrictions involving lifting and carrying, and to avoid contact with inmates.

Respondent was able to continue to accommodate Petitioner's restrictions for a period of time. However, since permanent restricted duty assignments were not available at the Sheriff's office, Petitioner was advised on June 23, 2023 that light duty work would no longer be available for her and that she would be placed on paid leave pursuant to the Public Employee Disability Act (P.E.D.A.). The letter of June 23, 2023, confirmed that her P.E.D.A. leave would expire on November 15, 2023.

Petitioner was subsequently advised on November 20, 2023 that her available P.E.D.A. benefits would expire on November 28, 2023.

Petitioner testified that she did not begin looking for work within her restrictions upon receipt of the June 23, 2023 letter as she believed that looking for work would jeopardize her entitlement to P.E.D.A. benefits.

Petitioner testified that she began looking for a job on December 11, 2023. Petitioner's job search records, initially from December 11, 2023 through January 16, 2024, indicate that she applied for 40 jobs during this period of time. (PX U).

On February 5, 2024, at Petitioner's own expense, Petitioner met with Kari Stafseth-Zamora, a certified rehabilitation counselor at Vocamotive, to evaluate her vocational needs, if any. (PX M) On February 20, 2024, Vocamotive recommended that Petitioner undergo full vocational rehabilitation services, including re-training and taking computer classes at their facility. They opined that Petitioner was employable at a wage rate of \$15 to \$18 per hour.

Petitioner testified that she continued to engage in a self-directed job search through February 24, 2024. Around that time, Petitioner was advised by her husband, who is also employed by Piatt County, of a job opening as a Deputy Clerk for Piatt County. After he advised Petitioner of this job opening, Petitioner interviewed and was subsequently hired with an effective start date of March 18, 2024, approximately three and a half months after her PED A benefits expired, and approximately three months after her job search began.

Petitioner testified that she is currently working for Respondent in this new position and is earning \$15 per hour. She also testified that she currently works 35 hours per week. Kari Stafseth-Zamora reviewed Petitioner's job logs and opined, "I personally have no criticism of Ms. Winder's Independent job search efforts, as it appears that she did do the best she could, given the circumstances she was under, and these efforts did ultimately result in her obtaining a job." (PX T, p. 42)

On August 7, 2024, approximately eight months after Petitioner's initial penalties motion alleging Respondent's failure to provide vocational rehabilitation services and maintenance, and five months after Petitioner had obtained employment in another department of Respondent's County offices within her permanent work restrictions, Respondent retained Julie Bowes at MedVoc Rehabilitation for a vocational assessment. When MedVoc attempted to schedule an interview of Petitioner, their request was denied by Petitioner's attorney, as Petitioner had already obtained suitable employment. MedVoc reviewed the job search logs that had been provided as well as the Vocamotive reports. Ms. Bowes opined that Petitioner did not conduct a diligent and good faith job search based upon her delay in attempting to find employment, sporadic and undocumented or inappropriately documented job search efforts and concluded that this adversely affected her ability to obtain employment. (RX 3). However, Ms. Bowes testified that the job Petitioner found for herself was an appropriate job. (RX2, p. 40)

CONCLUSIONS OF LAW

Issue “F”: Is Petitioner’s current condition of ill-being causally related to the injury? The Arbitrator finds as follows:

The Petitioner sustained an undisputed accidental injury involving her left hand, wrist and arm on January 5, 2020. Petitioner testified that she did not have any prior injuries or problems with her left hand, wrist or arm prior to January 5, 2020. Following the accident, Petitioner received medical treatment, including surgeries that were performed on July 17, 2020, October 8, 2021 and July 15, 2022. Petitioner also underwent additional medical treatment, including physical therapy and counseling related to the accident.

Following completion of her medical treatment, and after reaching MMI, Petitioner underwent a Functional Capacity Evaluation, which resulted in permanent restrictions which Respondent was unable to accommodate.

Relying on the Petitioner’s credible and un rebutted testimony, the chain of events, and all of the medical evidence in the record confirming that the treatment Petitioner received after her undisputed work injury is related to the injuries she sustained on January 5, 2020, the Arbitrator finds that Petitioner’s current condition of ill-being is causally related to her work accident on January 5, 2020.

Issue “G”: What were Petitioner’s earnings? The Arbitrator finds as follows:

Petitioner’s wages were \$20.26 per hour during the year preceding the accident, and the parties stipulated that Petitioner’s overtime hours are to be included in her average weekly wage calculations, at Petitioner’s straight time rate.

Petitioner’s payroll records were admitted into evidence. (RX1). These are biweekly records which begin with earnings and pay beginning on December 30, 2018. Accordingly, and to properly calculate the average weekly wage for the year preceding the accident, the first pay records (biweekly earnings from 12/30/18 to 1/12/2019) are not included in the average weekly wage calculation. The remaining earnings, through 1/4/2020, are included, resulting in an average weekly wage of \$875.74, with corresponding TTD and PPD rates of \$583.83 and \$525.44, respectively.

Issue “J”: Were the medical services that were provided to the Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services? The Arbitrator finds as follows:

As indicated on the Request for Hearing form, and on the record, Respondent represented that all of the medical bills Respondent had received prior to November 10, 2024 have been submitted for processing and payment. Petitioner’s attorney provided Respondent’s attorney with the unpaid medical bills that were subsequently submitted into the record at hearing on November 12, 2024. Respondent’s attorney represented that all of the bills were either paid or being processed for payment. Petitioner represented that they are not seeking duplicative payments of these bills. (AX 1; Tr. 10-12).

As the medical bills correlate with the medical records that were admitted into evidence, the Arbitrator finds that the Respondent is liable for the medical bills, and they are to be paid pursuant to Sections 8(a) and 8.2 of the Act, to the medical providers, to the extent that any of the claimed and submitted medical bills remain unpaid.

Issue “K”: Is Petitioner owed Maintenance? The Arbitrator finds as follows:

The parties agreed that Petitioner could not return to her usual and customary work as a correctional officer for Respondent. Petitioner’s treating physicians agreed with her permanent restrictions, as outlined in her valid FCE. Respondent authored two letters acknowledging her restrictions and eventually terminating her on November 29, 2023, as they could not provide a permanent accommodation of her work restrictions. (RX4; RX5)

Rule 9110.10 of the Rules Governing Practice Before the Commission requires that a written vocational rehabilitation assessment be prepared any time it can reasonably be determined that the injured employee will be unable to return to regular work and/or when they have been totally incapacitated for 365 days. According to the rules, that report thereafter is required to be updated in writing every four months until the case is resolved. Section 9110.10 states:

- a) An employer’s vocational rehabilitation counselor, in consultation with the injured employee and, if represented, with his or her representative, shall prepare a written assessment of the course of medical care and, if appropriate, vocational rehabilitation required to return the injured worker to employment. The vocational rehabilitation assessment is required when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which he or she was engaged at the time of injury. When the period of total incapacity for work exceeds 365 days, the written assessment required by this subsection shall likewise be prepared.
- b) The assessment shall address the necessity for a plan or program that may include medical and vocational evaluation, modified or limited duty, and/or retraining, as necessary.
- c) At least every 4 months thereafter, or until the matter is terminated by Order or Award of the Commission or by written agreement of the parties approved by the Commission, the employer, or his or her representative, in consultation with the employee and, if represented, with his or her representative, shall:
 - 1. if the most recent previous assessment concluded that no plan or program was then necessary, prepare a written review of the continued appropriateness of that conclusion; or
 - 2. if a plan or program had been developed, prepare a written review of the continued appropriateness of that plan or program, and make in writing any necessary modifications.
- d) A copy of each written assessment, plan or program, review and modification shall be provided to the employee and/or his or her representative at the time of preparation, and an additional copy shall be retained in the file of the employer and, if insured, in the file of the insurance carrier. Copies shall be made available for review by the Commission, on its request, until the matter is terminated by Order or Award of the Commission or by written agreement of the parties approved by the Commission.
- e) The rehabilitation plan may be prepared on a form furnished by the Commission.
- f) Nothing in this Section abridges the rights of the parties.

The Arbitrator is persuaded by the Appellate Court’s Rule 23 opinion in *CDW Corp v. IWCC*, wherein the court found that the parties in that case agreed that the Petitioner required some form of vocational assistance, yet Respondent refused to provide said assistance, and held that the rules require a vocational rehabilitation

assessment by the employer's vocational rehabilitation counselor to be performed in accordance with the rules. 2021 IL App (2d) 200562WC-U, 2021 Ill. App. Unpub. LEXIS 1355.

In the Commission case of *Broner v. Saks 5th Avenue*, the Arbitrator accepted that both the medical evidence and the lack of a tender of a job within the petitioner's permanent restrictions required a vocational rehabilitation assessment under the rules with the assessment to be done by a counselor of Petitioner's choosing. The Commission modified the award to provide that the Respondent's vocational rehabilitation counselor prepare the written assessment in accordance with Section 9110.10(a) of the Commission Rules, noting it was "Respondent's duty under the rule" to provide a "written assessment be prepared by the employer's vocational rehabilitation counselor." 20 IWCC 0187.

Respondent never assisted Petitioner in finding work. There was no vocational rehabilitation assessment done in accordance with Section 9110.10(a) in a timely fashion. Only after Petitioner had been off work for one year on PEDAs benefits, and after Petitioner performed a self-directed job search for another three-and-a-half months, and another five months after Petitioner obtained a job within her permanent restrictions did Respondent obtain a vocational opinion.

Petitioner found herself a job as a Deputy Clerk for Respondent after applying and going in for two different interviews. She now makes \$15 and works 35 hours per week. (Tr. 58-59; PX W). Petitioner started this job on March 18, 2024.

Petitioner's vocational expert, Kari Stafseth-Zamora reviewed Petitioner's job logs and opined, "I personally have no criticism of Ms. Winder's Independent job search efforts, as it appears that she did do the best she could given the circumstances...and these efforts did ultimately result in her obtaining a job." (PX T, p. 42)

Respondent's vocational expert, Julie Bowes, testified that the job Petitioner found for herself was an appropriate job. (RX2 p. 40)

Petitioner made a successful effort to find employment and was given no assistance from the Respondent. She found herself an appropriate job within three and a half months of her PEDAs benefits expiring. The Arbitrator awards Petitioner maintenance in the amount of \$583.83/week for 15 4/7 weeks, commencing 11/29/23 through 3/17/24, as provided in Section 8(a) of the Act.

Petitioner is also entitled to maintenance from March 18, 2024 through the date of hearing. Petitioner was earning \$875.74 as a Piatt County Corrections Officer. Petitioner is now earning \$15 per hour working 35 hours per week, or \$525.00, as a Piatt County Deputy Clerk. (Tr. 58-59, PX W). Two thirds of the difference is \$233.83 per week. Respondent shall pay Petitioner maintenance benefits of \$233.83/week for 34 1/7 weeks, commencing March 18, 2024 through November 12, 2024, as provided in Section 8(a) of the Act.

Issue "L": What is the nature and extent of the injury? The Arbitrator finds as follows:

Petitioner elected her remedy of PPD pursuant to Section 8(d)(2) of the Act, rather than wage differential pursuant to Section 8(d)(1) of the Act.

The findings of fact, medical evidence and deposition testimony and causal relation findings and conclusions, all discussed above, are incorporated herein.

As this accident occurred after September 1, 2011, the nature and extent of the injury is determined using the following criteria:

- (i) The reported level of impairment pursuant to subsection (a) of Section 8.1;
- (ii) The occupation of the injured employee;
- (iii) The age of the employee at the time of the injury;
- (iv) The employee's future earning capacity; and
- (v) Evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability.

With regard to subsection (i) the Arbitrator notes that no AMA impairment report and/opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii), the occupation of the employee, the Arbitrator notes that Petitioner had been employed as a correctional officer at the time of the accident and that she was subsequently unable to return to work in this capacity due to her permanent restrictions. The Petitioner has lost her occupation and is now working as a Deputy Clerk for the Respondent within her permanent restrictions. The Arbitrator places significant weight on this factor.

With regard to subsection (iii), the Arbitrator notes Petitioner was 58 years old at the time of the accident. The Arbitrator places some weight on this factor.

With regard to subsection (iv), Petitioner's future earning capacity, the Arbitrator notes that Petitioner was, on the date of arbitration, earning \$15.00 per hour, and working a 35-hour week, as compared to her pre-injury earnings of \$20.26 per hour for a 40-hour week, along with regular overtime. The Arbitrator gives this factor significant weight.

With regard to subsection (v), evidence of disability corroborated by the medical records, the Arbitrator notes Petitioner underwent three surgeries on her left wrist, and had a frozen shoulder which resolved with two injections and some therapy and is now back to normal, and had undergone some counseling for anxiety and depression which resolved after some sessions. She has, however, significant ongoing complaints related to her left arm.

It is undisputed that Petitioner has been unable to return to work as a correctional office due to the injuries she sustained, which include permanent restrictions consisting of occasional 25-pound lifting from floor to waist; occasional 25 pound carrying limit; occasional 15-pound lifting limit from chest to overhead; and avoiding contact with inmates, all outlined in the valid FCE of January 13, 2023.

The Arbitrator further notes that Petitioner has been discharged from care by all of her doctors. Petitioner testified that she has not returned to the doctors with whom she underwent surgery for almost two years. Due to her significant medical interventions and corresponding evidence of disability, the Arbitrator places significant weight on this factor.

Based upon the above factors, and the record taken as a whole, the Arbitrator finds that the appropriate award for Petitioner should be as a loss of occupation, as provided for in Section 8(d)(2) of the Act, because Petitioner is not able to return to her usual and customary job duties as a correctional officer for Respondent, but did return to work for Respondent in a different office in an accommodated capacity. The Arbitrator finds that Petitioner sustained a permanent partial disability to the extent of 40% loss of use of her body as a whole.

Issue “M”: Should Penalties and Fees be imposed upon the Respondent? The Arbitrator finds as follows:

If an employer delays in paying compensation, the employer has the burden of showing that it had a reasonable belief that the delay was justified. *Howlett's Tree Service v. Industrial Comm'n*, 160 Ill.App.3d 190 (1987).

The Respondent has not shown that it had a reasonable belief that the delay in payment of maintenance was justified. Petitioner performed a successful job search, without assistance from the Respondent. Kari Stafseth-Zamora, Petitioner's vocational expert, found Petitioner's job search was appropriate. Respondent's vocational expert, Julie Bowes, also testified Petitioner was targeting appropriate jobs.

Julie Bowes only criticism of the Petitioner was that she did not perform an adequate job search. This opinion is not credible as it was formulated five months after Petitioner had found an appropriate job, with Respondent no less, and after contacting 40 potential employers within three and a half months of a self-directed search while receiving no benefits from Respondent.

Petitioner found her job, and Respondent's expert, along with Petitioner's expert opined that it was an appropriate job with appropriate wages. There is no evidence to support the non-payment of maintenance benefits once Petitioner started her new job, with Respondent and within her permanent restrictions, on March 18, 2024. Accordingly, the Arbitrator finds that Respondent's conduct was unreasonable and vexatious for non-payment of these maintenance benefits.

Moreover, Petitioner's finding of an appropriate job, within her permanent restrictions in only three and a half months is impressive. Had the Respondent made any effort to assist Petitioner, as required, perhaps they could have shortened her period of PEDAs and off-work benefits. It is disingenuous for Respondent to claim Petitioner's efforts at locating a job within her restrictions was lacking when Petitioner found an appropriate position within her severe permanent restrictions, through her own search and personal network, in such a short period of time, and with the Respondent. Any imperfection in Petitioner's job search is no defense to non-payment of maintenance, when Respondent had an affirmative duty under the rules to provide vocational assistance to Petitioner, whom they agreed could not return to her prior position given her restrictions. Respondent's non-payment of maintenance benefits for this period is also unreasonable and vexatious.

Therefore, the Arbitrator awards the following 19(k) penalties that are equal to 50% of the maintenance due and owing, or **\$8,082.73**.

And, pursuant to 19(l) penalties, the Arbitrator awards an amount equal to 348 days at \$30.00/day, not to exceed **\$10,000.00**.

Finally, pursuant to Section 16, the Arbitrator awards attorney's fees in the amount of twenty percent of \$18,082.73, or **\$3,616.55**.

The Arbitrator awards Petitioner total penalties and fees of **\$21,699.28**.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC001064
Case Name	Steve A. Cruz Jr v. Fairview Realty Group, Ltd
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0390
Number of Pages of Decision	28
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	CHRISTOPHER MOSE
Respondent Attorney	Glenn Blackmon

DATE FILED: 9/16/2025

/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 Causal connection, medical expenses, prosp. meds, TTD, TPD	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

STEVE A. CRUZ, JR.,

Petitioner,

vs.

NO: 21 WC 01064

FAIRVIEW REALTY,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the October 23, 2020 accidental injury, entitlement to medical expenses, as well as prospective medical care, and entitlement to temporary disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

FINDINGS OF FACT

While the Commission adopts the Findings of Fact as set forth in the Decision of the Arbitrator and incorporates such facts herein, we also supplement the record with additional facts and medical records:

On or about August 7, 2021, Petitioner shot a music video for a song called "Hunnid Grand." The video depicts Petitioner dancing around and leaning back and forth without any apparent signs of pain or discomfort. Petitioner testified the video was completed in one day. The following day, Petitioner made a Facebook post indicating that the video shoot was "in the books."

RX 11. Notably, this video shoot occurred approximately two days prior to the date that Respondent's §12 examiner Dr. Singh diagnosed a resolved lumbar muscular strain, and opined Petitioner was capable of returning to full duty work. During this examination, Petitioner complained of mid back, low back, and left buttock pain which increased with standing, sitting, climbing stairs, and walking. He also had difficulty bending forward. Dr. Singh examined Petitioner and reviewed the December 5, 2020 lumbar MRI, and opined that the radiographic findings did not correlate with the subjective pain complaints. *PX 4, p.40-44.* Further, the video shoot occurred approximately 20 days prior to the date treating physician Dr. Almansoori opined Petitioner had reached maximum medical improvement ("MMI"), was not a surgical candidate, and was released from care. *PX 2, p.18-20.*

Approximately one week later over the Labor Day weekend of 2021, Petitioner testified that he was very limited in what he was able to do. *Transcript, p. 65-66.* The record reflects that on September 4th and September 5th of 2021, Petitioner again made several Facebook posts. This time, the posts revealed that he fell off a jet ski while "flying," which was "awesome," and that he got saved by a pontoon. *RX 13.* At trial Petitioner testified that he was riding on a jet ski that weekend, but indicated that he was a passenger and not the driver. *Transcript, p.67-69.*

On January 4, 2024, Petitioner treated with nurse practitioner Lyndsey Johnson in Dr. Xia's office at Integrated Pain Management. He was still awaiting approval for the recommended lumbar microdiscectomy and indicated he was continuing with his home exercise program. Petitioner also indicated he was continuing to take his prescribed lyrica, meloxicam, and tramadol medications. He complained of constant low back pain, left greater than right, although the right-sided pain was worsening. Pain radiated down to his big toes bilaterally. Petitioner listed his illicit drug use as "Marijuana." Petitioner's medications were refilled, and he underwent a drug test. *PX 4, p.98-100.*

On February 1, 2024, Petitioner followed up at Integrated Pain Management in Dr. Xia's office, this time with family nurse practitioner Heather Cottini. Petitioner again indicated his ongoing pain complaints, and that he continued taking his medications. However, the drug test results were reviewed by FNP Cottini, who found it was positive for cocaine, but negative for tramadol and lyrica. Petitioner was requested to wean himself off of tramadol and lyrica. *PX 4, p.94-96.*

Petitioner testified that he stopped taking medication five to six months prior to the October 8, 2024 hearing date. He stated that Dr. Xia stopped prescribing it, and Petitioner believed it was because he repeatedly informed Dr. Xia that it was not doing much for him. *Transcript, p.33.* Petitioner also testified that his drug test results were "pretty accurate" and that he was in a dark place at that time and did not want to mix what he was taking recreationally with what he was taking medically. *Transcript, p.74-77.*

After the August 27, 2021 MMI designation by Dr. Almansoori, Petitioner continued treating, complaining of lumbar and radicular pain through October 3, 2024—just five days prior to the hearing date.

CONCLUSIONS OF LAW

I. Causal Connection

Initially, we note that Petitioner's October 23, 2020 accident was stipulated by the parties. After a hearing, the Arbitrator found Petitioner's testimony to be credible and consistent with medical records. Accordingly, the Arbitrator relied on Petitioner's testimony, medical records, and opinion of Dr. Mekhail in finding that Petitioner's current lumbar condition was causally related to the accidental work injury. After careful consideration, the Commission views the evidence differently than the Arbitrator, and finds that Petitioner's lumbar condition is causally related to said accident only through August 27, 2021, the date treating physician Dr. Almansoori opined Petitioner had reached MMI and released him from care.

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of his claim, *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989).

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 Commission*, 99 Ill. 2d 401, 406-07 (1984).

Here, having reviewed Petitioner's testimony in combination with the medical records and social media evidence, the Commission finds Petitioner to be less than credible, as he has been contradicted by the greater weight of the evidence.

With respect to Petitioner's current condition of ill-being, we first note that on October 23, 2020, he suffered a stipulated accident when he fell off the highest step of a six or seven foot ladder. While working, the ladder became wobbly and tipped, causing Petitioner to kick away from it so as to not land on his tools below as he fell. He landed on the concrete floor with tile on top, with the beltline area of his low back making first contact.

Subsequently, Petitioner presented for medical treatment with complaints including hip and back pain radiating down his legs bilaterally. He claimed he was unable to sit in a chair due to pain in his coccygeal region. On December 5, 2020, a lumbar MRI was performed. *PX 2, p.77-78*. On December 9, 2020, Petitioner was still symptomatic but was somewhat better. Treating physician Dr. Almansoori reviewed the lumbar MRI and diagnosed congenital spinal stenosis with superimposed degenerative changes, mild spondylolisthesis, multilevel spinal, lateral recess and neuroforaminal stenosis. *PX 2, p.29-31*.

On December 27, 2020, an epidural steroid injection was performed bilaterally at L4-5. *PX 2, p.32-33*. Petitioner testified the injection helped for a few weeks. On January 8, 2021, Petitioner was released to sedentary duty beginning January 9, 2021. *PX 2, p.1-2*. A left sided injection at L4-5 was performed March 9, 2021, and decreased Petitioner's sacroiliac pain by 50%. *PX 2, p.6-9, 53-54*. Later, L2-3 and L4-5 epidural injections were performed on May 18, 2021, garnering a 50-60% relief of symptoms. Petitioner indicated his right radicular symptoms had resolved, but he still had left-sided lumbar pain and left thigh pain. *PX 2, p.12-14, 55-56*.

On August 27, 2021, Dr. Almansoori referenced the December 5, 2020 lumbar MRI again, noting it demonstrated congenital stenosis with degenerative changes. He diagnosed L2-3 and L4-5 spondylolisthesis with degenerative disc disease, left L5 radiculopathy and possibly at L3 as well, a resolved left T7 rib fracture, and left sacroiliac joint syndrome and PSIS tendinopathy. Dr. Almansoori opined Petitioner had reached MMI and was not a surgical candidate, since his stenosis was a combination of congenital narrowing with added mild disc herniations and spondylotic spinal degeneration resulting in moderate stenosis. Petitioner was released from care to either return to work with 30 pound lifting restrictions, or could consider alternative occupations. *PX 2, p.18-20.*

Despite these medical histories, Petitioner's testimony and social media undertakings do not support his claim of ongoing symptomatology. On the date he was released from care by Dr. Almansoori (August 27, 2021), Petitioner indicated his back pain was between 7 and 9 out of 10. However, just 20 days prior, he was able to perform in a video shoot for the song "Hunnid Grand," and can be seen walking, dancing, bouncing around, and leaning back and forth throughout the video, with no signs of pain or discomfort. The video shoot was completed in one day. However, just two days later, during his initial §12 examination with Dr. Singh, Petitioner alleged mid back, low back, and left buttock pain which increased with standing, sitting, climbing stairs, and walking. He also claimed difficulty bending forward. The video evidence directly contradicts the contemporaneous complaints Petitioner made while seeking medical care.

Additionally, Petitioner testified to a Labor Day vacation he took approximately one week after Dr. Almansoori's MMI designation. He testified that he was very limited in what he was able to do there. However, his social media interaction surrounding this vacation reveals that while there, he fell off a jet ski and couldn't get back on, but that it was awesome. Furthermore, although Petitioner testified that he was not driving the jet ski when he fell off of it, the contemporaneous Facebook posts contradict his testimony. Within the same chain of posts, another individual responded to Petitioner's statement that he fell off a jet ski, and expressed that Petitioner must have been "flying," to which Petitioner responded "...what other way is there to drive a jet ski?" Petitioner also indicated that he was wake jumping from the pontoon.

The Commission finds Petitioner was less than forthcoming regarding his testimony of being very limited during this vacation. Not only was Petitioner able to endure the jet skiing at a high speed and being thrown off of it, but he indicated that he actually enjoyed the situation. This further supports Dr. Almansoori's MMI designation and opinion that Petitioner was not a surgical candidate. Moreover, Petitioner's testimony that he was not driving the jet ski is also contradictory to the evidence in the record, thus minimizing the weight we afford his testimony regarding the severity of his lumbar pain.

The video and the social media interactions defy Petitioner's claim of back pain between 7 and 9 out of 10, and also contradict his claims of difficulty with certain movements. However, the most transparent contradiction is Petitioner's claim that he continued taking his pain medication. The record reflects that even after Dr. Almansoori's release from care, Petitioner continued to be symptomatic, while treating his symptoms with prescribed medications. While Petitioner surmised that Dr. Xia ceased to prescribe Petitioner medication due to a lack of efficacy the record is clear that after a January 4, 2024 drug test, it was revealed that Petitioner was not in fact taking prescribed tramadol or lyrica. Instead, Petitioner's drug screen was positive for cocaine. At trial, Petitioner corroborated the accuracy of the test results. The contradiction between

Petitioner's public exhibitions and his subjective pain complaints is even more blatant when coupled with the fact that he was neglecting to take his prescribed pain medications.

Taken in the light most favorable to Petitioner, the evidence only supports that Petitioner suffered from accident-related lumbar symptoms through August 27, 2021. Petitioner's pain complaints subsequent to that date are not credible. The evidence of Petitioner's activity both leading up to this date, and subsequent to this date not only fails to support his complaints, but also corroborates Dr. Almansoori's MMI opinion and decision to release Petitioner from care. The record in totality supports a finding that at that time, Petitioner had reached MMI and did not require further medical care. Accordingly, the Commission modifies the Arbitrator's ruling, and finds that causal connection between the accidental injury and Petitioner's condition of ill-being only extends through August 27, 2021.

II. Medical Expenses

§8 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..." 820 ILCS 305/8(a).

For the reasons discussed above, the Commission concludes that Petitioner's lumbar condition was causally related to the instant accidental work injury, but only through August 27, 2021, and not thereafter. The Commission vacates the award of reasonable and necessary medical expenses listed in Petitioner's Exhibit 9 that were incurred after August 27, 2021. A review of Petitioner's Exhibit 9 indicates that all outstanding medical expenses were incurred subsequent to August 27, 2021. Accordingly, none of the outstanding balance is awarded to Petitioner.

III. Prospective Medical Care

Upon establishing causal connection and the reasonableness and necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Industrial Commission*, 294 Ill. App. 3d 705, 711-12 (2d Dist. 1997).

Having concluded that Petitioner's lumbar condition of ill-being is causally related to the stipulated October 23, 2020 work accident only through August 27, 2021, the Commission vacates the arbitrator's award of prospective medical care recommended by Dr. Mekhail.

IV. Temporary Total Disability

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Industrial Commission*, 372 Ill App. 3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement, and whether she is capable of a return to the workforce.

Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission, 236 Ill. 2d 132, 142, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill. 2d 107, 118 (1990).

Herein, the Commission finds that Petitioner's lumbar condition stabilized as of August 27, 2021. Likewise, for the reasons discussed above, we conclude that Petitioner's lumbar condition of ill-being is causally related to the instant work accident through August 27, 2021 and not thereafter. Consistent with this conclusion, we vacate the award for temporary total disability ("TTD") benefits for the period of August 28, 2021 through October 6, 2021. The Commission awards TTD benefits of \$320.00 per week for a period of 44 weeks (October 24, 2020 through August 27, 2021). The Commission also orders that Respondent shall have a credit of \$13,669.44 for benefits already paid.

V. Temporary Partial Disability

The Arbitrator awarded temporary partial disability ("TPD") benefits from October 7, 2021 through February 4, 2022. However, since this entire time period is after the August 27, 2021 MMI date, we vacate the entire TPD award. Petitioner's lumbar condition during this time period was unrelated to the instant work accident.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 4, 2024, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$320.00 per week for a period of 44 weeks, representing October 24, 2020 through August 27, 2021, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall have a credit of \$13,669.44 for benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that the award for temporary partial disability benefits is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the medical expenses incurred from the date of accident through August 27, 2021, as provided in §8(a), subject to §8.2 of the Act. All outstanding medical expenses in Petitioner's Exhibit 9 were incurred after August 27, 2021. Accordingly, these expenses are not awarded to Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that the award for prospective medical care recommended by Dr. Mekhail 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 have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

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

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

September 16, 2025

RAW/wde

/s/ *Raychel A. Wesley*

O: 8/6/25

/s/ *Frank J. Soto*

43

/s/ *Carolyn M. Doherty*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC001064
Case Name	Steve A Cruz Jr v. Fairview Realty Group, Ltd
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Christopher Mose
Respondent Attorney	Glenn Blackmon

DATE FILED: 12/4/2024

/s/William McLaughlin, Arbitrator

Signature

INTEREST RATE WEEK OF DECEMBER 3 2024 4.31%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Steve A. Cruz, Jr.

Employee/Petitioner

v.

Fairview Realty

Employer/Respondent

Case # **21** WC **01064**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **October 8, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **October 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* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$24,960.00**; the average weekly wage was **\$480.00**.

On the date of accident, Petitioner was **35** 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 \$ **13,669.44** for TTD, \$**0** for TPD, \$**0** for maintenance, and \$**0** for other benefits, for a total credit of \$ **13,669.44**.

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

ORDER

Respondent shall pay the bills listed in Petitioner's Exhibit #9 subject to the fee schedule, pursuant to Sections 8(a) and 8.2.

Respondent is ordered to pay Petitioner TTD benefits in the amount of 320.00 for this period of 49-5/7 weeks for the period from October 24, 2020, through October 6, 2021, as described in this decision.

Respondent is ordered to pay Petitioner TPD benefits in the amount of \$281.46 for 14-3/7 weeks for the period from October 7, 2021, through February 4, 2022.

Respondent is further ordered to authorize Petitioner to schedule an office visit with Dr. Mekhail to pursue further treatment which would be reasonable and necessary.

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.


DECEMBER 4 2024

 Signature of Arbitrator

Steve A. Cruz, Jr. v. Fairview Realty
21 WC 001064

STATEMENT OF FACTS

This matter proceeded to hearing before Arbitrator William McLaughlin on October 8, 2024.

Steve Cruz (Petitioner) testified that he was employed by Fairview Realty (Respondent), to perform light construction. On October 23, 2020, Petitioner was working on a six-foot step ladder hanging the overhead ductwork. While he was on the ladder the ladder gave way and Petitioner fell to a concrete floor with tile on top of it. He landed striking his back, buttocks and striking his head. (Tr. 9-12).

As a result of the fall Petitioner sustained a concussion and suffered from pain in his head, his lower back and down the right side of his leg. Petitioner testified that he had never had a back injury before nor pain going down either of his legs. After the accident Petitioner presented with Dr. Almonsoori of Advanced Orthopedics. Initially Petitioner underwent conservative treatment with physical therapy. After complaints of ongoing pain persisted, Dr. Almonsoori requested an MRI, which was performed on December 5, 2020. Based on the MRI results Dr. Almonsoori administered an epidural injection into the right side of Petitioners back, which resolved the pain in his right leg, but Petitioner began having pain on the left side. Dr. Almonsoori then administered an epidural injection into the left side of Petitioners back on March 9, 2001, which provided some relief. A second epidural was performed on May 18, 2018, without positive results.

On August 27, 2001, Dr. Almonsoori released him from his care. Petitioner testified that he was still having pain on his left side when the doctor released him from his care. Even though Dr. Almonsoori released Petitioner from the Dr.'s care, Dr. Almonsoori did not release Petitioner to work. (Tr. 12-18).

Petitioner was examined pursuant to Section 12 of the Act by Dr. Kern Singh. Petitioner testified he exam was very short and consisted of the doctor mainly requesting Petitioner to

answer a few questions and asking Petitioner sit on a table and lift his legs. walked out. (Tr. 20-23).

Petitioner underwent a Functional Capacity Evaluation (FCE), in December 2021. After the FCE. Petitioner sought treatment from Dr. Tian Xia who ordered an EMG and a CT scan of Petitioner's pelvis and provided an injection into Petitioner's SI joint. Dr. Xia referred Petitioner to an orthopedic spine specialist, Dr. Anis Mekhail. After an evaluation Dr. Mekhail recommended surgery for Petitioner's lumbar spine. (Tr. 19, 23-24).

Petitioner testified that he has suffered pain in his lower back since his injury. After he had the first epidural on the right side of his back, the pain going down his right leg resolved but he has experienced pain going down his left leg. (Tr.25). At present, Petitioner experiences numbness and tingling in his legs, with a loss of feeling in his toes and the outer part of his left thigh. Petitioner testified that his current symptoms are predominantly in the left leg but within the past 6-8 months he has bad pain on the outer part of his right leg, down to his toes. These symptoms are aggravated by activity such as bending to pick a sock up from the floor which triggered a back spasm and pain shooting down his right leg. Petitioner testified he twists the wrong way or if he drives over a speed bump and it jerks his body a certain way, that will produce an electric jolt from his mid back going down his legs. (Tr.26-30). Petitioner explained that walking helps his back, but he is limited in the amount of distance he can travel; if he walks more than two blocks he begins to feel numbness or pins and needles in his toes. (Tr. 32).

Petitioner recalled that he began working as a delivery driver for Door Dash on October 7, 2021. But left because he did not like restaurants taking too long to fill orders. (Tr. 38).

Petitioner also worked as a cashier at Casey's general store. He had a chair to use so he could sit or stand as needed behind the counter. Part of his duties included light stocking of shelves. He said the heaviest thing he would lift was a gallon of anti-freeze which he estimated weighed about 7 pounds. He would stock these about chest height though he occasionally would bend down to pick up the bottle. (Tr.40-41).

On cross examination Petitioner testified about his Facebook page, in addition Arbitrator observed a rap video Petitioner made in August 2021 which was introduced into evidence. (Rx.2) (Tr. 54). In the video the Petitioner is observed various activities. Petitioner testified that the video was completed over the course of one day. Petitioner acknowledged that he went on vacation over Labor Day weekend in September 2021, and acknowledged that he rode on a Jet Ski. (Tr. 67-68).

Medical Records

Records from Ingalls Occupational Medicine Clinic show that Petitioner sought treatment there immediately after his accident on 10/23/20. He reported pain mainly in the mid and lower back, right hip, buttock, and tailbone area and pain in his head, left ribs and forearm which he indicated resulted from a fall from a ladder and landing on his right hip/buttock with his head then hitting the ground. X-rays showed a fracture of his sacrum, a non-displaced fracture of 6th rib on the left side and a non-displaced fracture of his sacrum. In addition, he was also diagnosed with a concussion. He was restricted from work. (Rx.8, p.9-10). Petitioner returned to the Clinic on 10/26/20 and he reported that his condition was the same. Petitioner remained off work. On 10/30/23, records indicate he reported continued pain in the area of his left rib, his left hip, and getting 3-4 headaches per day. He was planning to see a spine specialist at Advanced Orthopedics. His “no work” status was continued. (Rx.8, p.30-31).

Records from Advanced Orthopedic and Spine Care show that Petitioner was examined there by Dr. Khaled Almansoori on November 2, 2020. Petitioner provided a history of his injury and described pain in his left ribs, pain radiating from his spinal area down his right leg in an L5 distribution with parathesia and numbness, and an inability to sit in a chair due to pain in the region of the coccyx. Dr. Almansoori recommended conservative management and scheduled him for a follow up in 4 weeks and recommended that if Petitioner remained symptomatic an MRI would be scheduled. Petitioner began physical therapy on November 5th 2020, with ongoing complaints of right sided low back pain, right hip pain, numbness in the right

leg to the calf, numbness on the left side that goes to the hip and stabbing pain in the tailbone and small of the back. (Px.2, p.21-22, 63-64).

On December 2, 2020, Petitioner returned to see Dr. Almansoori. Petitioner continued to have radiating pain in his right leg with numbness and parathesia and was experiencing radicular symptoms in his left leg. A MRI of his lumbosacral spine was performed on December 5, 2020. Which showed a minimal grade 1 retrolisthesis at L3-4 and L4-5; a disc-osteophyte complex on the right at L3-4 with moderate bilateral recess stenosis, disc bulging and endplate osteophytes at L4-5 which resulted in moderate bilateral neuroforaminal stenosis and moderate bilateral lateral recess stenosis with a slight inferior disc extrusion posteriorly, and mild facet degeneration at L5-S1 with mild bilateral neuroforaminal stenosis and moderate right lateral recess stenosis and mild left lateral recess stenosis. (Px.2, p.27-28, 77-78).

Petitioner returned on December 9th and Dr. Almansoori noted he continued to remain symptomatic although he was somewhat better. On exam, Dr. Almansoori found a positive straight leg test on the right side and noted tenderness along the greater trochanter bilaterally but mostly on the left side. On reviewing the MRI, the doctor concluded it showed congenital spinal stenosis with superimposed degenerative changes with left side L3-4 moderate lateral recess stenosis, moderate bilateral stenosis at L4-5 and moderate right sided stenosis at L5-S1. He diagnosed Petitioner with radiculopathy and spondylolisthesis, in addition to a fracture of his coccyx and rib. (Px.2, p.29-31). Petitioner continued with physical therapy, but on December 27th, Dr. Almansoori concluded Petitioner had failed conservative care and performed a transforaminal epidural steroid injection bilaterally at L4-5. (Px.2, p.32-33).

Petitioner returned to Dr. Almansoori on January 8, 2021, at which time he reported he was doing somewhat better but that he continued to remain symptomatic. His pain was still in the area of his lumbar spine and was radiating into the right leg. Dr. Almansoori prescribed additional physical therapy and felt if Petitioner did not improve, he would request a new MRI. (Px.2, p.1-2). On February 19, 2021, Petitioner reported he was somewhat better, and his pain was now 3-4/10 in severity but he began experiencing numbness and parathesia in his left leg in the L5 distribution. Petitioner was observed to have a positive straight leg raise test on the right

side and exhibited tenderness around the SI region, especially on the left side. Dr. Almansoori diagnosed ongoing radiculopathy and Sacroiliitis. The doctor recommended a left-sided Sacroiliac joint injection and Petitioner wear a sacroiliac belt, and considered the possibility of a surgical decompression if that did not help. (Px.2, p.4-5).

An injection into Petitioner's left SI joint was administered on March 9, 2021. (Px.2, p.53-54). On 3/19/21, records indicate that Petitioner's pain in the SI joint area had diminished about 50%; he rated it at 2-3/10, while his pain in the lumbosacral and PSIS area that was 7/10, though physical therapy was helping with that, and the pain in his left leg was described at 3-5/10 into his anterior thigh and the top of his foot, which the doctor felt was in keeping with an L5 distribution but possibly L3 as well. Petitioner denied any symptoms into his right leg. trigger point injections were administered to address the lumbosacral pain and ordered left-sided epidural injections at L2-3 and L4-L5. (Px.2, p.6-9). The epidural injections were administered on May 18, 2021. (Px.2, p.55-56). On June 1, 2021, Petitioner reported 50-60% relief; his radicular symptoms had resolved but he continued to have some pain in the left side of his lower back and left lateral thigh. On exam, he showed a negative Straight Leg Raise though he continued to have pain to palpation over the PSIS area on the left. He was given a cortisone injection into his left PSIS. (Px.2, p.12-14). On July 7th, Dr. Almansoori noted that Petitioner again had a positive Straight Leg Raise test on the left side. He recommended further physical therapy, continued work restrictions and noted that the radicular symptoms had improved but he was now focusing on SI joint symptoms.; (Px.2, p.15-17).

IME

Petitioner was examined by Dr. Kern Singh on August 9, 2021. Petitioner complained of pain in his midback and left buttock without radiating components. Dr. Singh reviewed the MRI which he described as showing mild lumbar spondylosis without stenosis and diagnosed Petitioner with a lumbar strain, which had resolved. Dr. Singh concluded that the medical treatment had been excessive considering the MRI showed only "age-appropriate degenerative changes" and that Petitioner could return to his work on a full duty basis. (Rx.1).

Petitioner's final visit with Dr. Almansoori was on August 27, 2021. Dr. Almansoori noted that Petitioner continued to complain of left-sided lower back pain and left lateral thigh pain. The doctor remarked that the MRI showed Petitioner had congenital stenosis with degenerative changes and spondylolisthesis at L4-5 and possibly at L3-4 or L2-3, and multilevel mild to moderate neuroforaminal and lateral recess stenosis with a slight inferior disc extrusion on the right at L4-5. Dr. Almansoori concluded that Petitioner was not a surgical candidate because his stenosis was a combination of congenital narrowing with added mild herniations and spondylotic degeneration. He recommended further physical therapy and opined that Petitioner was could either return to work with a 30 lb limit or find an alternative occupation. (Px.2, p.18-20).

FCE

Petitioner underwent a Functional Capacity Evaluation at Independent Worksite Solutions on November 3, 2021. This exam found that Petitioner made his best effort and was considered to be valid and fully reliable. (Px.3, p.3). Petitioner was found to have limits in walking, prolonged sitting, lifting, and carrying. (Px.3, p 7-8) It was determined that he was not capable of meeting the physical demands of his job with Respondent. (Px.3, p 3-4).

Petitioner began treating with Dr. Tian Xia on January 20, 2022. Dr. Xia noted that Petitioner complained of low back pain that radiated to his left leg and foot and was worse with bending and lifting. Petitioner provided a history of his injury and his prior treatment with Dr. Almansoori. Dr. Xia noted limited range of motion in the lumbar spine, paraspinal muscle spasms, and a positive Straight Leg Raising on the left side. He asked Petitioner to get a copy of his MRI and return. On February 15, 2022, after reviewing the prior MRI, Dr. Xia concluded that Petitioner had issues with his left SI joint, he ordered a CT scan of the SI joint and an EMG to assess for radiculopathy. Dr. Xia noted that Petitioner had symptoms of over manifestation, but he acknowledged this can happen with patients with chronic pain and observed an absence of any Waddell's signs. (Px.4, p.151-156). The CT of the pelvis showed a widening of the Left SI joint and a cyst which could be post traumatic or metastatic, communicated with the CT joint; an MRI was suggested to better observe it. (Px.4, p.6). An MRI of Petitioner's pelvis was

performed on April 29, 2022, and was read to be normal. (Px.4, p.4). An EMG was negative. (Px.4, p.10).

Second IME

Petitioner was examined again by Dr. Singh on May 9, 2022. Dr. Singh reiterated his earlier opinion that Petitioner had sustained a soft tissue lumbar sprain which had resolved. His exam was normal and without any objective findings. He again opined that Petitioner's medical treatment was not reasonable or medically necessary. (Rx.).

On July 8, 2022, Dr. Xia reviewed the CT and MRI reports of Petitioner's SI joint and concluded that the MRI proved the cyst which had been observed was post-traumatic in nature. He referred Petitioner to Dr. Anis Mekhail for an evaluation of the left SI joint. (Px., p.138-39). Dr. Xia administered Petitioner steroid injections into both SI joints on August 16, 2022; Petitioner reported initial worsening of his symptoms then resolution of his symptoms for two days before the symptoms gradually came back. (Px.4, p.132-135). On September 27th, Dr. Xia noted Petitioner still reported pain on the left side of his low back radiating to his toes, and still reported no pain into his right leg since the injection. He noted that Petitioner had seen Dr. Mekhail who had diagnosed a pinch nerve due to a disc injury; on October 25 it was noted Petitioner is waiting for approval of the surgery. (Px#4, pp.128-131).

Petitioner has continued to be seen at Integrated Pain Management on a monthly basis, with complaints of radicular pain into his left leg, but they also show a progression of radicular symptoms into his right leg from 1/23/23 through 5/26/23. (p.114),

On April 25, 2024, Petitioner reported that his radicular symptoms into his legs were about equal. (Px.4, p.88). On October 3, 2024, Petitioner saw Dr. Xia's Nurse Practitioner and reported that his symptoms were getting worse with the weather getting colder; it was noted that he was experiencing spasms and locking up again and radiation into both legs, more in the left leg than in the right and he was still waiting for authorization for surgery. (Px.4, p.76-77).

Records of Parkview Orthopedics show that Petitioner saw Dr. Anis Mekhail on July 28, 2022, and provided a history of his injury falling off a ladder and having ongoing back pain and was told it was sacroiliac in nature. On exam, Dr. Mekhail found Petitioner to have a positive Faber's test on the left. Dr. Mekhail reviewed the radiology report of the CT scan of the pelvis and concluded that there was a small subcortical cyst communicating with the sacroiliac space and considered that it might be traumatic in origin. Mr. Mekhail recommended a steroid injection into the SI joint and requested a copy of the MRI. (Px.5, p.7-8). On 9/01/22, Dr. Mekhail noted that Straight Leg Raising was now present on the left though it was negative when he had been seen before. The doctor ordered an MRI of the lumbar spine to evaluate for the source of his pain. (Px.5, p.6). The MRI was performed on 9/19/22 and was read by a Radiologist to depict a 2mm right-central disc protrusion at L3-4 with moderate bilateral neuroforaminal stenosis exacerbated by facet hypertrophy and a 4mm broad-based central herniation with bilateral moderate neuroforaminal stenosis exacerbated by facet hypertrophy at L4-5, and a broad-based bulging disc with moderate neuroforaminal stenosis at L5-S1. (Px.5, p.27). Petitioner was seen by Dr. Mekhail on September 26, 2022, the doctor noted the broad-based herniated disc at L4-5 was likely the source of his pathology and recommended a microdiscectomy. (Px.5, p.5).

Petitioner returned to Dr. Mekhail on February 2, 2023, to review a MRI which was performed on December 5, 2020. Dr. Mekhail reviewed the MRI and observed that the MRI from 2020 showed a broad disc bulge at L4-5 and Petitioner reported that he had bilateral radiculopathy at that time but after an injection it settled into only his right leg. Dr. Mekhail compared this to the MRI performed on 9/26/22 and stated that the newer MRI showed a progression of the disc which started in 2020 and had progressed over time. (Px.5, p.4). Dr. Mekhail believed it was related to Petitioner's injury from falling off the ladder because he did not suffer from his symptoms prior to the injury. Dr. Mekhail noted that Petitioner exhibited positive straight leg raising on the right during his exam that day; he recommended home exercises until the surgery was approved. (Px.5, p.4).

Third IME

Petitioner was, examined by Dr. Singh a third time on March 29, 2023. Dr. Singh reviewed the MRI performed on September 19, 2022, and opined it Petitioners condition was unchanged from the previous MRI from December 5, 2020, and showed mild lumbar spondylosis and stenosis which he did not believe to be significant. (Rx.3).

Records from Door Dash admitted into evidence reflected Petitioner's earnings from October 7, 2021 through February 4, 2022. The records indicate for a period of 14-3/7 weeks. Petitioner earned a total of \$834.17. (Px.10). Pay records from Petitioner Casey's Retail Company reflected he worked there from 1/29/23 through 8/02/04. (Px.11).

Deposition Testimony of Dr. Singh

Dr. Singh testified that when he first examined Petitioner on August 9, 2021, Petitioner reported his pain in his low back and buttock without pain in his leg. Dr. Singh therefore concluded that Petitioner's pain was axial in nature with no radicular component. (Rx.4, p.10). Dr. Singh noted that he believed Petitioner exhibited Waddell signs during his exam which indicated that Petitioner believed his level of discomfort to be greater than documented during the exam and described the MRI to show only minimal findings and Petitioner to have a normal exam. (Rx.4, p.14-15). During the second exam Dr. Singh testified that Petitioner's pain complaints had changed from during the first exam, since Petitioner was voicing "non-radicular in nature" pain complaints which were pain in his left leg and the outside part of his left thigh which Dr. Singh believed did not follow a particular pattern, like a dermatome or a skin or muscle distribution. (Rx.4, p.19-20). In regard to the CT scan of Petitioner's pelvis, Dr. Singh acknowledged that it showed an opening around the left SI joint which he described as part of a degenerative process. (Rx.4, p.21). He further opined that the EMG showed no active nerve-root compression. (Rx.4, p.22). Dr. Singh testified that his exam did include a FABER test for

the SI joint, but it was negative; he acknowledged that Waddell signs were negative during his examination. (Rx.4, p.23).

Dr. Singh testified on cross, that his opinion that the MRI performed on December 5, 2020, showed “mild spondylosis with diffuse changes throughout the lumbar spine.” Dr. Singh further testified he did not disagree with the Radiologist interpretation of the MRI mainly “because that’s what diffuse spondylosis is.” (Rx.4, p.36-37). Dr. Singh agreed that Petitioner’s L4-5 disc was where most of the spondylosis was seen on the MRI and agreed that included facet degeneration but disagreed with the radiologist’s interpretation of moderate lateral stenosis. (Rx.4, p.34,37). Dr. Singh testified that he did find pathology on the 12/05/20 MRI, which was spondylosis and mild degenerative changes. (Rx.4, p.38). Dr. Singh testified that he believed Petitioner had sustained a non-structural lumbar strain which would have resolved in 4-6 weeks, but he was unable to state when he believed when it did resolve. (Rx.4, pp.38-40).

Regarding the MRI performed on September 19, 2022, Dr. Singh testified that the results between the two were very similar. and that Radiologist’s interpretation of a 4mm broad-based central disc herniation, was consistent with his own reading of the film. (Rx.4, pp.48-49). He further stated that the Radiologist’s finding of a 2mm right-sided disc protrusion at L3-4 was of no clinical significance because Petitioner did not have any right-sided complaints. (Rx.4, p.49).

Deposition Testimony of Dr. Mekhail

Dr. Mekhail testified that he is a Board-Certified spine specialist. He first saw Petitioner on July 28, 2022, after he had been referred by Dr. Xia to be evaluated for his SI joint. During the initial examination Petitioner complained of pain in the left side of his back and his left buttock since he fell off of a ladder on 10/23/20. Petitioner’s other pain complaints had resolved except for the left back going down his left leg. In the past he had pain going down both legs but the pain in the right side of the leg had resolved. (Px.7, p.9, 11). During the exam, Dr. Mekhail found a negative Straight Raise Leg test on the left side on July 28, 2022, but in a follow up appointment on September 1, 2022, was positive. Dr. Mekhail testified that that there had

probably been nerve root irritation during the first exam which sometimes waxes and wanes. further explained that pain waxes and wanes and can be masked by medication so it can be hard to predict. (Px.7, p.12-13). Also, if a patient has a “weak” positive finding on straight leg raising, that finding can come and go and it’s not as apparent. (Px.7, p.13). Dr. Mekhail testified he again saw Petitioner on 9/26/22, he reviewed the MRI which had just been performed on September 5th. Dr Mekhail observed a small, herniated disc on the right at L3-4 and a broader herniated disc which he believed explained Petitioner’s radiculopathy in his left leg to his big toe. The doctor noted on 9/26/20 he described radiculopathy on the left side and recommended a microdiscectomy at L4-5 on the left. (Px.7, p13-15).

Dr. Mekhail testified he compared the MRI t done on December 5, 2020, and one performed on September 19, 2022. Dr. Mekhail concluded that the second MRI showed a herniation which was a progression of a disc injury observed on the first MRI. He testified that once a disc has a tear it can be prone to leaking and bulging out further, so he concluded based upon his observation of the studies and of the history provided by the Petitioner hat the original injury to the disc had progressed to what was observed on the second MRI. (Px.7, p.17-18). Dr. Mekhail further explained that the MRI showed a broad-based disc at L4-5 which would be competent to produce radicular symptoms in both the right and left legs; Petitioner’s initial complaints into his right leg were likely resolved by the epidural injections he had previously. (Px.7, p.21-22). r. Mekhail opined that Petitioner’s symptoms in his left low back and buttocks are mostly likely caused by the herniated disc at L4-5 and his SI joint is not a pain generator for Petitioner; he therefore is not recommending further treatment for the SI joint. (Px.7, p.23-24).

Deposition Testimony of Joseph Santillo

Joseph Santillo testified that he performed a Functional Capacity Evaluation on Petitioner. Mr. Santillo is Certified Athletic Trainer and has been certified by the National Athletic Trainer’s Association to perform Functional Capacity Evaluations. He has been performing FCEs for about 10 years. Mr. Santillo is the owner of Independent Worksite Solutions through which he performs Functional Capacity Evaluations for various entities such

as Onecall, several different doctors' offices, and three to four physical therapy companies. He was trained to perform FCEs using the Matheson System, the Occupro System, and also in the Key System. (Px.8). He estimated that he performs approximately 200 FCEs per year, the vast majority of which are sent to him by OneCall. (Px.7, p19). He uses the Matheson system to perform his FCEs. (Px8, p.16).

Mr. Santillo acknowledged that he performed an FCE for Petitioner Petitioner's attorney. on November 3, 2021. He found that Petitioner made his best effort and was considered to be valid and fully reliable. (Px.3, p.3). Petitioner was found to have limits in walking, prolonged sitting, lifting, and carrying. It was determined that he was not capable of meeting the physical demands of his job with Respondent. (Px.3, p 3-8).

Deposition Testimony of Joe Castronovo

Dr. Castronovo who has a Doctorate in physical therapy, testified that the Functional Capacity Evaluation performed by Mr. Santillo was insufficient for a variety of reasons. Dr. Castronovo. He testified Mr. Santillo is not sufficiently qualified to perform FCEs as an Athletic Trainer and questioned the lack of pre-procedure examination of Petitioner. (Rx.6, Dep Ex.2). Dr. Castronovo acknowledged that he frequently provides evaluations of FCEs performed in workers' compensation cases, predominately on the behalf of defense firms, insurance adjusters and nurse case managers. (Rx.6, p.55-57). Dr. Castronovo opined that the FCE performed by Mr. Santillo lacked sufficient objective evidence on which to form an opinion about how much Petitioner could safely lift. Dr Castronovo testified that he did not personally meet with Petitioner but did acknowledge that none of the treating physicians had opined the Petitioner could lift 50 pounds, Dr. Castronovo testified that his understanding of what Petitioner's job duties were. (Rx.6, pp.80-83).

CONCLUSIONS OF LAW

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

Decisions of an Arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his testimony. Where a claimant's testimony is inconsistent with his actual behavior and conduct, the Commission holds that an award cannot stand. McDonald v. Industrial Commission, 39 Ill. 2d 396 (1968); Swift v. Industrial Commission, 52 Ill. 2d 490 (1972).

It's the function of the Commission to judge credibility of witnesses and resolve conflicts in medical evidence and assign weight to witness testimony. O'Dette v. Industrial Commission, 79 Ill.2d 249 (1980); Hosteny v. Workers' Compensation Commission, 397 Ill. App. 3d 665 (2009).

Arbitrator finds the Petitioners testimony to be credible, and his statements were consistent with medical records and history.

The Arbitrator observed the Petitioner testify during the hearing and finds him to be a credible witness. He appeared to answer questions in a straightforward and truthful manner. The Arbitrator has compared his testimony with the totality of the evidence and does not find any material contradictions which might diminish his credibility. The Arbitrator finds that Petitioner's testimony was credible.

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

The evidence established that Petitioner sustained an injury when he fell off a stepladder onto the floor on October 23, 2020. The evidence from Ingalls Occupational Medicine Clinic

indicates that he sustained a concussion, a fracture of his left 6th rib, a fracture of his sacrum, and an injury to his lower back. The Arbitrator notes that there was no evidence presented that showed that Petitioner had prior problems with his lower back prior to this injury and that he has suffered back pain since the accident. This is corroborated by the treating medical records. While Petitioner's pain was predominantly right-sided in the weeks and months following his injury, the physical therapy records from 11/05/20 demonstrate that the Petitioner was also complaining of numbness on the left side that goes to the hip. (Px.2, p.63-64). Arbitrator believes the records and testimony of the Petitioner give more credibility to Dr. Mekhail's conclusions that the broad-based disc protrusion/herniation at L4-5 is capable of irritating Petitioner's nerve roots bilaterally and produced symptoms on the left side in addition to the right.

Arbitrator finds Petitioner suffered a right-sided radiculopathy initially following his injury which is corroborated by the treatment records, which confirm his condition was treated with a transforaminal epidural injection administered by Dr. Almansoori on December 27, 2020. After the injection Petitioner's complaints on his left side and left buttocks became an issue at which point Dr. Almansoori began to treat him for SI joint complaints. On March 9, 2021, Dr. Almansoori switched his focus on the left-sided complaints from the SI joint to a discogenic cause and recommends epidural injections for the left side, in the L3 and L5 distributions. When those injections were provided in May 2021, the Petitioner experienced 50% reduction in his symptoms.

Arbitrator finds the results of the epidural injections are inconsistent with Dr. Singh's findings that Petitioner did not sustain a structural injury to his lumbar spine. Therefore, Arbitrator gives less weight to Dr. Singh's opinion that Petitioner's MRIs reveal only "age-related changes".

In addition, Arbitrator also gives less weight to the argument that the Petitioner condition is not causally related based on a music video and Facebook post, which does not establish that the Petitioner's testimony or medical records are to be disregarded when considering causation.

Therefore based upon Petitioner's testimony and medical records of complaints which developed after he fell off a ladder, the MRIs performed of his lumbar spine, and the opinions of Dr. Mekhail, the Arbitrator finds that the Petitioner's current condition of ill-being is causally connected to his injury of 10/23/30.

(J), whether the medical services that were provided to petitioner reasonable and necessary, the Arbitrator finds as follows:

Having found causation, the Arbitrator finds that Petitioner's medical treatment has been reasonable and necessary to treat the effects of his injury. Petitioner has undergone physical therapy, epidural injections, and trigger point injections to relieve his pain. These have been modalities of treatment which has been necessary and reasonable given the reasoning set forth above.

The Arbitrator finds the Respondent responsible for the medical bills, pursuant to the fee schedule, contained in Petitioners Exhibit #9.

(K) What prospective medical is Petitioner entitled to:

The Arbitrator finds the Arbitrator awards Petitioner Prospective medical care as follows; Dr. Mekhail has recommended Petitioner undergo a microdiscectomy at L4-5 to relieve the effects of his injury. The Dr. Mekhail testified that he feels this procedure is necessary as all conservative forms of treatment have failed. Because Petitioner has not been examined by Dr. Mekhail since September 2023, Dr. Mekhail testified that he would want to examine Petitioner prior to scheduling any surgery and if still necessary Arbitrator finds Respondent responsible for the procedure and any and all treatment and medications that is related to pre- and post surgery.

Having found Petitioner's current condition is causally connected to his injury of 10/23/20, the Arbitrator orders Respondent to authorize an office visit with Dr. Mekhail in order to determine further treatment.

(L) What temporary benefits are in dispute:

The Arbitrator considered a note Dr. Almansoori releasing Petitioner to sedentary work on January 9, 2021 (Px.2, p.82), which was not accommodated by Respondent. Dr. Almansoori continued to restrict Petitioner's work capacity up until and including the date that he released Petitioner from his care on August 27, 2021, with permanent restrictions of no lifting more than 30 pounds. However, Arbitrator finds that Petitioner had not reached MMI, due to his ongoing complaints and his subsequent treatment with Dr. Xia and Dr. Mekhail.

Petitioner testified that he began driving for Door Dash on October 7, 2021., Petitioner quit working for Door Dash after February 4, 2022, because he found it difficult to get in and out of a care frequently. He testified that he began working at Stella's Place in early April. Until he was terminated soon thereafter. (Rx.14).

The Arbitrator therefore finds that Petitioner was temporarily and totally disabled from October 24, 2020, through October 6, 2021, when he began working at Door Dash. The Arbitrator therefore orders Respondent to pay TTD benefits in the amount of \$320 per week for a period of 49-5/7 weeks. Respondent shall receive a credit for the amount of TTD previously paid to the Petitioner.

Evidence from Door Dash show Petitioner's work there was minimal, earning only \$834.17 over the course of 14-3/7 weeks, which is an average of \$57.81 per week. The Arbitrator therefore finds that Petitioner was temporarily and partially disabled from October 7, 2021, through February 4, 2022, a period of 14-3/7 weeks. Pursuant to Section 8(a), the Arbitrator finds that Respondent shall pay to Petitioner two-thirds of the difference between his Average Weekly Wage of \$480.00 and \$57.81. This amount is \$281.46 for 14-3/7 weeks. ($\$480 - \$57.81 = \$422.19$. Two thirds of that amount is \$281.46.

While Petitioner quit his job at Door Dash after February 4th, the evidence indicates that he began working at Stella's Place shortly thereafter. Petitioner testified that he worked for

The evidence indicates that Petitioner was capable of working after he left Door Dash, and therefore is not entitled to further TTD benefits.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC021642
Case Name	Tristen Weber v. Chris's Service Company
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0391
Number of Pages of Decision	13
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Ivo Austin
Respondent Attorney	Paul Dykstra

DATE FILED: 9/18/2025

/s/Stephen Mathis, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Tristen Weber,

Petitioner,

vs.

No. 22 WC 21642

Chris's Service Company,

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 issue of vocational rehabilitation 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 Commission strikes the last paragraph of the Arbitrator's Decision and replaces it with the following: "Petitioner sustained an injury which caused a reduction in his earning power and he has proven rehabilitation will increase his earning capacity."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 3, 2024, 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 \$26,000.00. 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.

September 18, 2025

SJM/sk

o-9/9/2025

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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	22WC021642
Case Name	Tristen Weber v. Chris's Service Company
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Ivo Austin
Respondent Attorney	Paul Dykstra

DATE FILED: 9/3/2024

/s/ Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 27, 2024 4.685%

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

☐	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)

TRISTEN WEBER

Employee/Petitioner

v.

CHRIS'S SERVICE COMPANY

Employer/Respondent

Case # **22** WC **021642**

Consolidated cases: **n/a**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **June 27, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **July 14, 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 **\$11,395.00**; the average weekly wage was **\$455.80**.

On the date of accident, Petitioner was **19** years of age, *single* with **0** dependent children.

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

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

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

ORDER***Vocational Rehabilitation Benefits***

Respondent shall pay all reasonable and necessary expenses of Vocational Rehabilitation, under section 8(a) of the Act, including the following: (1) past vocational consultant fees of Independent Rehabilitation Services, Inc., of \$4,990.05 incurred from September 24, 2023, to June 12, 2024; (2) costs of retraining courses at Parkland Community College; (3) future fees of Independent Rehabilitation Services, Inc., for ongoing vocational rehabilitation consulting services; and (4) maintenance benefits while Petitioner is participating in vocational rehabilitation services.

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

September 3, 2024

STATE OF ILLINOIS)
) SS
 COUNTY OF DOUGLAS)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

TRISTEN WEBER
 Employee/Petitioner

v.

Case #: 22 WC 021642

CHRIS'S SERVICE COMPANY
 Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Background:

Petitioner, Tristen Weber, was the sole witness at the hearing before the Honorable Edward Lee on June 27, 2024. Petitioner was born on June 10, 2003. (TX at 7.) He was 21 years old on the date of the hearing. (TX at 15.) He lives with his mother in Tolono, Illinois, in Champaign County. (TX at 7.) The highest level of education he achieved is a G.E.D. (TX at 7.) Petitioner has no other certifications or licenses. (TX 34.) He is not married; he has no children. (TX at 8.)

Petitioner's employment history entails three months making kettle corn at an orchard; some painting for a family friend; and his work for Respondent, Chris's Service Company. (TX at 9.) Petitioner worked as a trash collector for Respondent. (TX at 10.) He began working for Respondent in late 2020 or early 2021. (TX at 9.) He worked approximately 40 hours per week. (TX at 10.) The parties stipulated that Petitioner's average weekly wage was \$455.80. (AX1.)

Petitioner's job duties for Respondent involved riding on a knee-high step on the back of a garbage truck. (TX at 11.) Petitioner stepped down and back up the step at every stop the garbage truck made. (TX at 12.) Petitioner would bring the customers' trash cans to the truck and then operate a "dumper" that would dump the contents of the can into the truck. (TX at 12.) For some customers, Petitioner would walk to the customer's front door, collect their trash, and carry the trash to the truck. (TX at 13.)

Prior to July 14, 2022, Petitioner was in good health and had no work restrictions. (TX at 14.) He planned to take a job as a union painter in the future. (TX at 28.)

Work Accident:

On July 14, 2022, Petitioner was injured in a work accident arising out of, and in the course of, his employment with Respondent. (TX at 14, 15; AX1.) Petitioner was 19 years old at the time. (TX at 15.) Petitioner was riding on the back corner of a garbage truck. (TX at 16.) The garbage truck unintentionally backed into a parked box truck. (TX at 16, 17.) Petitioner's body was crushed between the two trucks. (TX at 17.) Petitioner suffered injuries to multiple body parts, including his left hip area. (TX at 17-19.) Petitioner described the injury to his left hip area as similar to a "shark bite" that "took a big chunk out my side almost and just left a hole." (TX at 17.)

Medical Care:

Petitioner was airlifted to Carle Foundation Hospital in Urbana, Illinois. (TX 19.) He was transferred and admitted to Northwestern Medicine in Chicago. (TX 19-20.) He underwent approximately 14 surgeries. (TX 20.) At the time of the hearing, Petitioner wore a brace on his left leg. (TX 20.) Petitioner continues to treat with Dr. David Fletcher of Safeworks Illinois, who is the medical provider responsible for opining on Petitioner's ability to work. (TX at 24.)

Dr. Fletcher's medical records were admitted as Petitioner's Exhibit 1. (TX at 36.) Petitioner first saw Dr. Fletcher on September 16, 2022, roughly two months after the work accident. (PX1 at 2.) Dr. Fletcher's diagnosis was "crush injury with multiple musculoskeletal issues." (PX1 at 7.)

Dr. Fletcher noted the following issues: (1) post ex-lap with splenectomy and primary repair of colon; (2) extensive soft tissue defect of the left flank and pelvis with exposed bone s/p ORIF; (3) left coccygeal fractures; (4) right clavicle fracture; (5) left rib fractures 1-10 with flail chest s/p plating of ribs 6 and 8; (6) 10 cm left upper arm laceration closed with interrupted nylons; (7) road rash of the left flank; (8) bilateral soft tissue defects in his groins; (9) road rash to the anterior aspect of his bilateral legs; (10) lung, left lobe laceration; (11) left transverse process fractures of L1-L4; (12) left kidney infarction; (13) open book fracture; (14) widening of the left SI joint. (PX1 at 7.)

Dr. Fletcher opined that Petitioner was temporarily totally disabled from September 16, 2022, to August 16, 2023. (PX1 at 9, 92.)

On July 13, 2023, Dr. Fletcher anticipated that maximum medical improvement would likely occur sometime between January 2024 and July 2024. (PX1 at 86.) Dr. Fletcher recommended vocational rehabilitation and that Petitioner go back to school in January 2024. (PX1 at 86.)

On August 16, 2023, Dr. Fletcher stated in his record, "I have recommended starting voc rehab now as he will undoubtedly need permanent work restrictions." (PX1 at 89.) Dr. Fletcher noted further, "Discussed MMI date prediction. Need to see how he responds to further therapy. He is not a candidate for work conditioning due to the fact he will never go back to work as a garbage truck operator." (PX1 at 89.)

On August 16, 2023, Dr. Fletcher ordered the following work restrictions: (1) ground level work only; (2) no ladder climbing; (3) no lifting more than 10 pounds; and (4) limited stairs. (PX1 at 92.)

On November 30, 2023, Dr. Fletcher declared Petitioner at MMI. (PX1 at 103, 105.) Dr. Fletcher also reviewed a vocational rehabilitation assessment dated October 31, 2023. (PX1 at 101-02.)

Prior to this hearing on June 27, 2024, Dr. Fletcher most recently saw Petitioner on May 9, 2024 (PX1 at 132-37.) Dr. Fletcher continued to order work restrictions of the following: (1) ground level work only; (2) no ladder climbing; (3) no lifting more than 10 pounds; and (4) limited stairs. (PX1 at 137.)

Vocational Rehabilitation:

Petitioner began working with certified vocational consultant, Jeremy Rosene, of Independent Rehabilitation Services, Inc., in the fall of 2023. (TX at 30.) Petitioner and Mr. Rosene developed a vocational rehabilitation plan that included retraining. (TX at 30-31.) The retraining consisted of Petitioner's taking computer classes at Parkland Community College in Champaign County. (TX at 30-31.)

Petitioner agreed with the contents of the vocational rehabilitation plan. (TX at 30.) Petitioner testified that he wants to return to work and is motivated to complete retraining courses. (TX at 31.) Petitioner has reliable transportation to Parkland Community College and has the support of his family. (TX at 31-32.) Petitioner indicated a preference to begin with a limited courseload because he has not done school work since dropping out of high school. (TX at 32-33.)

Petitioner has not yet begun taking courses at Parkland Community College because the workers' compensation insurance carrier denied paying for those courses. (TX 33.) Thus far, Petitioner's counsel has been paying for vocational rehabilitation services. (TX 34.)

Mr. Rosene testified at an evidence deposition on June 20, 2024. (PX2.) Mr. Rosene's evidence deposition was admitted into evidence at the June 27, 2024, hearing. (TX at 36.)

Mr. Rosene, MS, CRC, CVE, LCPC, testified that he is a vocational consultant employed at Independent Rehabilitation Services, Inc. (PX2 at 4-5.) He is certified in the State of Illinois as a rehabilitation counselor and vocational evaluator. (PX2 at 7.) He has been certified as a rehabilitation counselor since 2013. (PX2 at 7.)

Mr. Rosene does vocational consulting for both petitioners and respondents. He estimated that 50% of his work is for petitioners and 50% is for respondents. (PX at 8.)

Mr. Rosene was hired by Petitioner's counsel to provide vocational rehabilitation services to Petitioner. (PX at 9.) Mr. Rosene first met with Petitioner on September 28, 2023, to perform a vocational assessment. (PX at 10.) Mr. Rosene's office drafted a vocational assessment report, dated October 31, 2023, which was introduced as an exhibit at his deposition without objection. (PX2 at 11.)

Mr. Rosene reviewed Petitioner's medical records from multiple providers, including Dr. Fletcher. (PX2 at 12.) Mr. Rosene researched the Dictionary of Occupational Titles entry for garbage collector. (PX2 at 12-13.) Garbage collector is classified in the "very heavy" category of physical demands, requiring occasional lifting over 100 pounds, frequent lifting of 50 pounds, and constant lifting of 20 pounds. (PX2 at 13.) Garbage collector is considered an "unskilled" position, meaning it has no transferable skills. (PX2 at 13, 17.)

Mr. Rosene determined that Petitioner has approximately five decades of remaining work-life expectancy. (PX2 at 14.) Mr. Rosene described Petitioner's job-seeking skills as "pretty well nonexistent[.]" (PX2 at 15.) Petitioner has never received vocational rehabilitation services in the past. (PX2 at 17.)

Mr. Rosene concluded that Petitioner is unable to return to his former trade as a garbage collector. (PX2 at 18-19, 33.) Mr. Rosene concluded that Petitioner would benefit from a vocational rehabilitation program because of the following bases: (1) Petitioner's education level of a G.E.D.; (2) his work restrictions limiting him to sedentary work; (3) his lack of job-seeking skills; and (4) his lack of transferrable skills. (PX2 at 20-21.)

Mr. Rosene concluded further that Petitioner would benefit from a vocational rehabilitation program that included retraining. (PX 20.) Specifically, Mr. Rosene recommended a shorter, practical retraining program in the technology professional sector at Parkland Community College. (PX2 at 20-21.) The specific program Mr. Rosene recommended is the "computer foundations" certificate program. (PX2 at 24.)

Mr. Rosene recommended this shorter program instead of a longer, more academically rigorous program. (PX 21-22.) Mr. Rosene described the recommended Parkland retraining program as providing the most "bang for the buck." (PX2 at 22.)

Mr. Rosene described the Parkland computer foundations program as requiring 17 to 19 semester hours to complete. (PX2 at 25.) The cost of the program is approximately \$3,000.00. (PX2 at 25.)

Mr. Rosene advised that Petitioner should begin the program by attending only 1 or 2 classes initially, because Petitioner has been out of school for a long time and has never taken college-level courses. (PX2 at 28.)

Mr. Rosene researched the labor market to determine Petitioner's likely job prospects after completing the Parkland program. (PX2 at 25.) Mr. Rosene testified that there were open job positions in Petitioner's geographic area for which Petitioner would qualify upon completing the program, including: IT support technician; desktop support person; and IT help desk. (PX2 at 26.) Mr. Rosene testified that the wage range for those positions was \$20 to \$25 per hour. (PX2 at 26.)

Mr. Rosene testified that Petitioner is "very motivated" to pursue retraining at Parkland. (PX2 at 22.) Mr. Rosene met with Petitioner and Petitioner's mother at Parkland to meet with an advisor about the program. (PX2 at 22-23.) Mr. Rosene was impressed by Petitioner's engagement and his family's support. (PX2 at 23.)

Mr. Rosene continued providing vocational rehabilitation services to Petitioner until March 9, 2024, when vocational rehabilitation services were put on hold, awaiting the results of this hearing. (PX2 at 30.)

Mr. Rosene drafted the following reports--in addition to his initial Vocational Assessment of October 31, 2023--which were admitted as exhibits to his deposition without objection: (1) December 7, 2023, Vocational Progress Report #1 (PX2 at 26); (2) December 15, 2023, Vocational Progress Report #1 Addendum (PX2 at 27); (3) February 12, 2024, Vocational Progress Report #2 (PX2 at 29); (4) March 19, 2024, Vocational Progress Report #3 (Hold) (PX2 at 30); and (4) June 12, 2024, Wage Research Report (PX2 at 31).

The June 12, 2024, Wage Research Report provided research showing that, if Petitioner had not been injured and was instead still employed as a garbage collector today, he would likely be earning \$19.43 per hour. (PX2 at 31-33.)

Mr. Rosene testified that the injuries Petitioner suffered during the July 14, 2022, work accident reduced his earning potential. (PX 33-34.) Mr. Rosene testified that the Parkland computer foundations program would increase Petitioner's earning potential. (PX2 at 27-28, 34.)

Mr. Rosene testified that his office had thus far incurred \$4,990.05 in costs of vocational rehabilitation services. (PX2 at 35.) Those costs had been paid by Petitioner's counsel. (PX2 at 36.) The invoices for Mr. Rosene's services were admitted as a deposition exhibit without objection. (PX2 at 35.)

On cross-examination, Mr. Rosene testified that Petitioner is likely capable of performing entry level unskilled work. (PX2 at 37-38.) Mr. Rosene testified that he did not have an opinion whether there was a stable job market for Petitioner in entry level unskilled work because Mr. Rosene had not attempted any job placement in that area. (PX2 at 38.) Mr. Rosene testified, "without any computer skills and without any transferrable skills he would have a very hard time finding employment." (PX2 at 38.)

CONCLUSIONS OF LAW

The Arbitrator hereby incorporates by reference the above Findings of Fact, and the Arbitrator's and parties' exhibits are made a part of the Commission's file. After review of the evidence and due deliberations, the Arbitrator finds on the issues presented at trial as follows:

The Arbitrator finds that Petitioner is a credible witness. The Arbitrator finds that Mr. Rosene is a credible witness.

The fundamental purpose of the Workers' Compensation Act (Act) is to afford protection to employees by providing them with prompt and equitable compensation for their injuries. *McNamee v. Federated Equipment & Supply Co.*, 181 Ill. 2d 415, 421 (1998).

"The employer shall *** pay for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto." 820 ILCS 305/8(a) (West 2022). "[M]aintenance shall include costs and expenses incidental to the vocational rehabilitation program." 820 ILCS 305/8(a) (West 2022).

"Vocational rehabilitation may include, but is not limited to, counseling for job searches, supervising a job search program, and vocational retraining including education at an accredited learning institution." 820 ILCS 305/8(a) (West 2022). Section 8(a) "is flexible." *W.B. Olson, Inc. v. IWCC*, 2012 IL App (1st) 113129WC, ¶ 32.

A vocational rehabilitation counselor "shall prepare a written assessment of the course of medical care and, if appropriate, vocational rehabilitation required to return the injured worker to employment." 50 Ill. Adm. Code 9110.10(a). The "vocational rehabilitation assessment is required when it can be reasonably determined that the injured worker will, as a result of the injury, be unable to resume the regular duties in which her or she was engaged at the time of injury." 50 Ill. Adm. Code 9110.10(a). The assessment may include "retraining, as necessary." 50 Ill. Adm. Code 9110.10(b).

"The employee or employer may petition to the Commission to decide disputes relating to vocational rehabilitation and the Commission shall resolve any such dispute, including payment of the vocational rehabilitation program by the employer." 820 ILCS 305/8(a) (West 2022).

The Act does not set forth procedures or standards to determine the extent to which vocational rehabilitation is "necessary." *National Tea Co. v. Industrial Comm'n*, 97 Ill. 2d 424, 431 (1983).

Generally, a claimant is entitled to vocational rehabilitation, where (1) "he sustained an injury which caused a reduction in earning power" and (2) "there is evidence rehabilitation will increase his earning capacity." *Id.* at 432.

"[W]hether the claimant has sustained impairment of earning capacity cannot be determined by simply comparing pre- and post-injury income." *Jackson Park Hospital v. IWCC*, 2016 IL App (1st) 142431WC, ¶ 45.

Factors to consider when determining entitlement to vocational rehabilitation include the following: (1) the claimant's potential loss of job security; (2) the likelihood that the claimant will be able to obtain employment upon completion of his training; (3) whether the claimant has unsuccessfully undergone

similar rehabilitation in the past; (4) whether the claimant has received training under a prior rehabilitation program that would enable him to resume employment; (5) whether the claimant is "trainable" based on age, education, training, and occupation; (6) whether claimant has sufficient skills to obtain employment without further training or education; (7) the relative costs and benefits to be derived from the program; (8) the claimant's work-life expectancy; (9) the claimant's ability and motivation to undertake the program; and (10) the claimant's prospects for recovering work capacity through medical rehabilitation or other means. *Id.* at 432-33.

"Whether a rehabilitation program should be designed to restore [a] claimant to his pre-injury earning capacity depends upon the particular circumstances." *Id.* at 433. The factors above "should not be inflexibly applied." *Id.* "[I]t is essential that any program selected be reasonable and realistic." *Id.*

In *Howlett's Tree Service v. Industrial Comm'n*, 160 Ill. App. 3d 190 (1987), the appellate court upheld an award of vocational rehabilitation including retraining at a junior college, in a situation quite similar to the instant case. The claimant in *Howlett's* was (1) in his early 30's; (2) had a work history of unskilled manual labor; (3) sustained an injury which reduced his earning power; (4) could no longer perform manual labor; (5) worked with a vocational consultant to develop a rehabilitation program that would increase his earning capacity. *Id.* at 195-96.

The *Howlett's* court concluded, "Considering the relative cost and benefits to be derived from the vocational rehabilitation program, there seems little question that, particularly in light of [claimant's] work-life expectancy, the benefits far outweigh the costs." *Id.* The court noted that the involvement of a vocational consultant distinguished the case from the claimant-created rehabilitation program at issue in *Hunter Corp. v. Industrial Comm'n*, 86 Ill. 2d 489 (1981). *Howlett's*, 160 Ill. App. 3d at 195.

The Arbitrator hereby finds and concludes that Petitioner is entitled to vocational rehabilitation under section 8(a) of the Act. The Arbitrator finds and concludes that Petitioner sustained an injury on July 14, 2022, which caused a reduction in his earning power. The Arbitrator finds and concludes that there is evidence that rehabilitation will increase Petitioner's earning capacity.

The Arbitrator further finds and concludes that Petitioner is entitled to retraining courses at Parkland Community College as part of Petitioner's vocational rehabilitation program.

The Arbitrator further finds and concludes that Respondent must pay to Petitioner the following: (1) costs of vocational rehabilitation incurred thus far, totaling \$4,990.05; (2) costs of further reasonable vocational consulting; (3) costs of retraining courses at Parkland Community College; (4) maintenance payments while Petitioner is engaged in vocational rehabilitation.

In support of the Arbitrator's conclusions, the Arbitrator makes the following findings and conclusions: (1) Petitioner's injuries of July 14, 2022, caused him to lose job security; (2) Petitioner is likely to obtain employment upon completing retraining; (3) Petitioner has not unsuccessfully undergone vocational rehabilitation in the past; (4) Petitioner has not received training under a prior rehabilitation program that would enable him to resume employment; (5) Petitioner is trainable; (6) Petitioner lacks sufficient skills to obtain employment without further training or education; (7) the retraining program is relatively low-cost and will result in great benefit to Petitioner; (8) Petitioner has a work-life expectancy of approximately five decades; (9) Petitioner is motivated and able to undertake the vocational rehabilitation program, including retraining; (10) Petitioner lacks prospects to recover his work capacity through means other than vocational rehabilitation; (11) Petitioner is working with a vocational consultant, rather than pursuing a self-directed program; (12) the vocational rehabilitation program proposed by Petitioner is reasonable, realistic, and strikes an appropriate balance between cost to Respondent and benefit to Petitioner; (13) Petitioner has permanent restrictions on his ability to work.

The Arbitrator finds and concludes further that Petitioner is similarly situated to the claimant in *Howlett's*, 160 Ill. App. 3d 190. The Arbitrator concludes that the decision in *Howlett's* lends support to the Arbitrator's decision in this case.

Moreover, the Respondent has not presented a written assessment that vocational rehabilitation services are not warranted, under 50 Ill. Adm. Code § 7110.10.

The Arbitrator finds and concludes further that Petitioner's earning potential at the time he was injured exceeded the wages he was being paid by Respondent. Because of Petitioner's injuries, he no longer has the potential to pursue employment in work involving physical or manual labor, including work in skilled trades. Petitioner's earning potential and work capacity have been severely diminished by the work accident of July 14, 2022. Particularly in light of Petitioner's young age, Petitioner is entitled to vocational rehabilitation including retraining.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC000537
Case Name	Kevin Hollins v. Precision Vehicle Logistics LLC lending
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0392
Number of Pages of Decision	29
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	William Trimble
Respondent Attorney	Ashley Broadstone, Jessica Bell

DATE FILED: 9/18/2025

/s/ Amylee Simonovich, Commissioner

Signature

23 WC 000537

Page 1

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

KEVIN HOLLINS,

Petitioner,

vs.

NO: 23 WC 000537

PRECISION VEHICLE LOGISTICS
 LLC LENDING,

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, medical expenses, prospective medical care, penalties and fees, 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 August 1, 2024 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, 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.

23 WC 000537

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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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 18, 2025

O: 09/09/25

AHS/

051

s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC000537
Case Name	Kevin Hollins v. Precision Vehicle Logistics LLC lending
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	26
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	William Trimble
Respondent Attorney	Jessica Bell

DATE FILED: 8/1/2024

/s/ Maureen Pulia, Arbitrator

Signature

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

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)

KEVIN HOLLINS,

Employee/Petitioner

v.

PRECISION VEHICLES LOGISTICS, LLC.,

Employer/Respondent

Case # **23** WC **537**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Bloomington**, on **6/27/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **1/5/23**, 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 as it relates to his lumbar spine *is* causally related to the accident on 1/5/23 only through 5/26/23.

In the year preceding the injury, Petitioner earned **\$19,759.61**; the average weekly wage was **\$637.41**.

On the date of accident, Petitioner was **56** years of age, *single* with **1** dependent children.

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

Respondent shall be given a credit of **\$19,359.90** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$19,359.90**.

Respondent is entitled to a credit of **\$12,117.62** under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services for the treatment of petitioner's lumbar spine from 1/5/23 through 5/26/23, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of \$12,117.62 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.

Having found petitioner's current condition of ill-being as it relates to his lumbar spine is only causally related to the injury on 1/5/23 through 5/26/23, the petitioner's claim for prospective medical expenses is denied. The arbitrator finds the petitioner's lumbar spine returned to baseline by 5/26/23.

Respondent shall pay Petitioner temporary total disability benefits of \$424.94/week for 18-6/7 weeks, commencing 1/6/23 through 1/9/23, 1/19/23 through 5/26/23, as provided in Section 8(b) of the Act. Respondent shall be given credit of \$19,359.90 for the temporary total disability benefits paid.

Penalties and fees shall not be imposed on respondent.

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

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

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



Signature of Arbitrator

August 1, 2024

ICArbDec19(b)

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 56 year car parker, sustained an accidental injury to his lumbar spine that arose out of and in the course of his employment by respondent on 1/5/23. Petitioner was hired on 6/1/22. Prior to working for respondent petitioner testified that he drove taxicabs, worked as an Uber driver, and also worked at U-Haul and Kerry Ingredients. He also testified that he worked a few more jobs he could not recall. Petitioner testified that while he worked for respondent he did not have to call off work because of his back or left leg pain, and was not taking any medications for his back.

Petitioner had prior back problems dating back to at least 2014. On 10/14/15 petitioner presented for follow up for low back pain. He reported that he had physical therapy for his back, but it made it worse, and meds were not helping it. Petitioner was prescribed Tramadol and Ibuprofen. On 12/15/15 petitioner presented for ongoing back pain. He reported that the Tramadol helped. An MRI of the lumbar spine was ordered. On 1/12/16 petitioner followed up for his low back pain. X-rays of his thoracic and lumbar spine showed only mild degenerative changes of the lumbar spine. On 8/3/16 petitioner was in physical therapy for lower back pain and right leg pain. On 12/15/17 therapy was discontinued at the request of the petitioner. On 8/25/17 petitioner underwent x-rays of his lumbar spine that showed significant loss of disc height at L4-L5. Minor endplate changes were seen at L4-L5. On 11/8/17 petitioner underwent an MRI of the lumbar spine after an acute exacerbation of chronic low back pain. The impression was mild degenerative disc disease at lower 2 segments with small disc herniations at L4-L5 and L5-S1.

On 3/2/18 petitioner saw Dr. Naour for his low back and leg pain. He reported that his back pain began several years ago and was related to an accident on 8/22/15. He reported that he underwent physical therapy for his low back that helped, and was then of no benefit. He reported that he had just finished therapy and he had pain in his back radiating to his left lower leg. He rated his pain at an 8-10 on a scale of 10. He did not feel that he had any change in his condition with therapy. Dr. Naour assessed lumbar radicular pain in the setting of a disc herniation and significant degeneration at L5-S1, that was likely a chronic issue. Dr. Naour discussed an epidural steroid injection, but was not certain it would provide petitioner with any benefit. He referred petitioner for a surgical evaluation, because petitioner was under the impression that his condition was more of a surgical concern. He prescribed Gabapentin.

On 6/29/20 petitioner presented for chronic low back pain for many years. On 7/16/20 petitioner had x-rays taken of his lumbar spine for back pain. They were unremarkable. On 9/3/20 petitioner was seen for back pain and lower left leg pain and numbness that shoots down to his toes at times. He

reported a history of multiple motor vehicle accidents many years ago. Petitioner's lumbar spine was tender. He had positive pain with lumbar facet maneuvers bilaterally, mild left SI joint tenderness bilaterally, and a steady gait. He was prescribed Meloxicam and Tizanidine. He was referred to pain management for a left SI injection or other appropriate treatments for pain management. Physical therapy was recommended. On 2/2/21 petitioner was assessed with low back pain. On 4/20/21 petitioner began a course of physical therapy for neck and back pain.

Petitioner testified that his job for respondent was parking cars at Rivian. Petitioner, and other individuals, would go in a van and pick up cars that had just come off the assembly line and park them for Rivian. The petitioner, and other individuals would be taken in a van to the area where the cars came off the assembly line. They would get out of the van and drive the cars to the designated parking spaces. The van would then come and pick them up and take them back to the area where the cars come off the assembly line, and the process would begin again. Petitioner testified that he did this for 12 hours a day.

On 1/5/23 petitioner testified that the van was taking him and the crew to the area where they were to pick up the cars. At the area, the crew began to exit out of the left side of the van through two open side doors. As petitioner was about to step out of the van, the van began to pull away. Petitioner testified that he stumbled and struck the left side of his body on the frame of the open door and fell from the van stumbling and landing on his legs. Petitioner did not fall to the ground. Petitioner testified that he heard something pop in his back. (RX14)

Petitioner testified that he limped about 300 feet to the trailer where the office was located. He later testified that he stopped in the restroom on his way to the office trailer. Once he reached the office, he laid down and an ambulance was called by the manager. Petitioner was taken by ambulance to Carle BroMenn Medical Center emergency room. The report notes that petitioner complained of mid thoracic back pain. He reported that he was struck in the back by a vehicle door when the driver reportedly put the vehicle in reverse, and after accelerating, the door flung into him.

At the emergency room petitioner complained of back pain. He reported that he was stepping out of the side of a passenger van when the driver took off, not realizing he was exiting the vehicle. The vehicle was moving at a low rate of speed when he fell and hit the side of the vehicle, and then the passenger door hit him in the back. He stated that since then it hurts to move. He rated the pain as moderate. Petitioner was examined and underwent CTs of the cervical, thoracic and lumbar spines. The impression of all were no acute fracture or findings. He was given Ibuprofen, Flexeril and a few doses of Norco for home. He was authorized off work until 1/9/23.

On 1/12/23 petitioner presented to Bloomington Empire Occupational and Employee Health for primarily thoracic and lumbar spine pain. He denied any lower extremity pain, numbness or tingling. He was ambulating with a cane. He gave a history of the incident and reported increased pain since then. He was examined and assessed with thoracic and lumbar pain. He was released to modified duty work and referred to physical therapy. Petitioner was restricted to sitting work only, with no use of any dangerous machinery, and no driving of work vehicles. He was told to use over the counter medication.

On 1/19/23 petitioner presented to his primary care physician's office at OSF Medical Group, and was seen by Andrew Tharp, APRN, CNP. He provided a history of the injury. He reported that his symptoms had worsened since the injury. He noted that he was instructed to return to modified duty work with no driving and no lifting, but he stated that he was hardly able to get out of bed due to his pain. He also reported that sitting or standing even for a short period of time, caused increased pain. He reported radiating pain to the left lower extremity, with numbness in all the toes of the left foot, and three toes on the right foot. He reported weakness in both lower extremities, as well as decreased range of motion and difficulty bending forward. He was ambulating with a cane, and using cyclobenzaprine (Flexiril) without much relief. Tharp examined petitioner and assessed lumbar radiculopathy, acute bilateral thoracic back pain, chronic bilateral low back pain with left sided sciatica, and degenerative disc disease of the lumbar spine. Tharp prescribed Meloxicam and Gabapentin, and told him to continue taking Flexiril. He took petitioner off work through 1/27/23. An off work note was drafted.

Petitioner returned to Tharp on 1/27/23 complaining of more pain in his back and weakness in his legs. Following his examination, Tharp ordered an MRI of the lumbar spine. He continued petitioner's medications, and continued him off work.

Petitioner underwent an initial physical therapy evaluation at Carle BroMenn Physical Therapy on 2/1/23. He reported pain in the thoracic spine and low back. Petitioner also reported radiating pain and numbness into his legs to his feet. He was assessed with thoracic/lumbar contusions. Due to his reduced range of motion, strength and pain he was prescribed 4 weeks of therapy. Petitioner attended 7 visits.

On 2/3/23 petitioner followed up with Tharp. He reported no major changes in his condition. On 2/10/23 he reported some mild improvement in reported pain levels with addition of Tylenol and with participation in physical therapy. On exam he had some very mild improvement in lower extremity strength. Tharp continued current medications, and continued him off work. On 2/13/23 petitioner applied for a handicap placard.

On 2/16/23 petitioner underwent an MRI of the lumbar spine. The impression was low grade degenerative disc disease at L4-L5 and L5-S1 with small disc herniations without any significant progression since the prior MRI study of 11/8/17. No bony fracture or subluxation was noted.

On 2/21/23 petitioner returned to Tharp and noted mild improvement. Tharp noted that the MRI was essentially unchanged from the one performed 5 years ago. Tharp continued petitioner in physical therapy, and referred him to the pain clinic. Tharp continued petitioner off work.

On 3/1/23 petitioner was found to have made little to no resolution of his complaints and goals. He was discharged from formal therapy.

On 3/3/23 Tharp drafted a letter indicating that petitioner has been under his treatment and off work since 1/19/23, and was to remain off work through 3/8/23.

On 3/8/23 petitioner returned to Tharp reporting minimal improvement. Tharp wanted him seen by the pain clinic and to continue in physical therapy. He referred him to OSF Physical Therapy. Tharp continued petitioner's current medications, and continued him off work.

On 3/24/23 petitioner was seen by Laura Keller, APRN, CNP, at OSF Healthcare. Petitioner reported worsening pain. Following an examination, Keller was of the opinion that petitioner was to remain off work until able to be assessed by the pain clinic and physical therapy.

On 4/12/23 petitioner returned to Tharp. He reported persistent symptoms. He stated that his pain and weakness continued to limit his daily function and ability to walk at times. Tharp examined petitioner and assessed lumbar radiculopathy, degenerative disc disease of the lumbar spine, and weakness in both lower extremities. He continued petitioner off work and increased his Gabapentin.

On 4/13/23 petitioner underwent an initial physical therapy evaluation at St. Joseph Medical Center for his back pain. Petitioner attended 8 sessions through 5/23/23. Petitioner did not return after that visit.

On 4/25/23 petitioner presented to Dr. Kevin Rutz at Orthopedic Specialists, for his low back at the request of the respondent. Petitioner reported a history of having pain in his neck and low back in the past. Petitioner reported that when he was exiting the van on 1/5/23 the driver started backing up and the door of the van struck him and knocked him to the ground. He reported that the accident caused an increase in his normal neck and back pain. He also reported that since then he has pain in his back with radiation down his left leg, and pain in his neck with radiation down his left arm into his fingers. Petitioner stated that he was having problems with balance and had been using a cane.

Dr. Rutz reviewed records from Chester Nut Family Health Center 10/14/15 through 5/18/21, and records from 1/5/23 to 2/3/23. Following his record review and examination, Dr. Rutz assessed cervicalgia with radicular features, and low back pain, most likely discogenic in origin with left leg radicular features. Dr. Rutz was of the opinion that petitioner fits in the category of a sustained aggravation of a pre-existing degenerative condition. He stated the goal was to return petitioner to his pre-accident condition, which was not perfect, but he could work. He ordered an MRI of the thoracic and cervical spine. Once obtained and reviewed, he recommended a left L5-S1 epidural steroid injection. Dr. Rutz was of the opinion that the need for the studies is causally related to the injury on 1/5/23, and his treatment to date was reasonable and necessary, and related to the injury. Dr. Rutz was of the opinion that petitioner could work sedentary duty. He was of the opinion that petitioner would be at MMI when he reaches his pre-accident status, which would be consistent with him having some degree of symptoms, but the ability to function at a higher level and being sure that a spinal cord compression issue has been ruled out.

On 5/10/23 Tharp again examined petitioner and noted ongoing bilateral lower extremity weakness despite unchanged/stable MRI. He continued petitioner off work, increased his Gabapentin levels to 600 mg TID, and again referred petitioner to a pain specialist. Tharp also added chronic bilateral low back pain with left sided sciatica, and chronic bilateral thoracic back pain to his assessment. On 6/14/23 petitioner remained essentially unchanged so Tharp continued him off work, and maintained petitioner's Gabapentin levels. He also continued him in physical therapy. He provided petitioner with an off work note where he stated that petitioner has been off work since 1/19/23 and he could not clear petitioner to return to normal work activities.

On 5/25/23 petitioner had an altercation with a friend after they had both been drinking. He testified that he only had 2 drinks and his friend had around 15-20. Petitioner testified that his friend tried to punch him and he stepped back or stepped to the side, and his friend missed hitting him with his hand and "dove face first into the ground." Petitioner testified that his friend then passed out. After he nudged him with his foot to make sure he was alive, petitioner testified that he got back in his car and left. He denied he was taking any medication that day. Petitioner testified that he cannot take Tramadol and Moloxicam when he drives. Petitioner denied that he ever punched or kicked his friend.

Jeremy Fogg, an Actuarial Analyst at State Farm, was called as a witness on behalf of respondent. Fogg witnessed the altercation on 5/25/23 when he was driving on the street where the altercation occurred. Fogg testified that he noticed two individuals that seemed to be having an altercation, and moving towards the street. Fogg slowed down and noticed one individual fell to the ground and the other

person kept being aggressive and appeared to be assaulting the individual on the ground. Fogg pulled over to render aid and called 911. Fogg testified that the person still standing was still swinging his arms. He also testified that the person was kicking the individual on the ground and one of the kicks landed on the individual on the ground. He described the person standing as being pretty fluid with a “kind of a swing, swing, swing, kick, kick, kick.” He did not observe any physical limitations. He testified that he did not see petitioner using a cane, or wearing a brace. He testified that he later learned that petitioner was the person he saw on 5/25/23 that was standing after the other individual fell to the ground. Fogg testified that he did not know the petitioner or his friend prior to the altercations. When the police arrived, Fogg provided them with a statement.

On 5/27/23 officers arrived at petitioner’s home and took him into custody following the altercation with his friend on 5/25/23. (RX15) He testified that he told the officers he could not fight because he was hurt. Petitioner told the officers that he worked at Rivian and did not want them to call them because he had to go to work, or he was going to lose his job. However, he denied he ever said this. At the police station he stated that “straight up could have fucked him up”, when talking about the altercation with his friend on 5/25/23. Petitioner denied making this statement. Petitioner also stated that he was too fast for him and he couldn’t land a punch. Petitioner denied saying this because he could not see himself in the video and it did not sound like him.

On 7/17/23 petitioner returned to Tharp. Tharp ordered MRIs of the thoracic and cervical spine that were approved by workers’ compensation. Petitioner reported ongoing pain so Tharp increased his Gabapentin to 800 mg 3 times a day. He also continued petitioner’s Flexeril. Tharp again requested approval for a referral to a pain specialist. On 8/16/23 petitioner reported to Tharp worsening lumbar back symptoms with bilateral sciatica. He also reported ongoing chronic thoracic and cervical back pain. Tharp examined petitioner and changed his Flexeril to Baclofen 3 times a day. He continued petitioner’s Meloxicam and Gabapentin. He also started petitioner on Duloxetine (Cymbalta). He again reiterated his request for a referral to pain management, and continued petitioner off work. Petitioner testified that Tharp renewed his handicap parking placard at that time.

On 8/17/23 petitioner underwent an MRI of his cervical spine. The impression was mild to moderate degenerative changes of the cervical spine that contribute to mild spinal stenosis at C3-C4, C5-C6, C6-C7, scattered foraminal narrowing, mild degenerative change in the thoracic spine, and no significant spinal or foraminal narrowing.

On 9/13/23 petitioner followed up with Tharp. He stated that since worker’s compensation would not approve his visit to the pain clinic he would use his own insurance, Medicaid. He again reported no

improvement in his symptoms overall. Tharp increased petitioner's Cymbalta from 30mg to 60 mg daily. He continued petitioner's Baclofen and Meloxicam dosages. He also added a prescription for Tramadol twice a day, as needed. Petitioner was instructed to make an appointment with the pain clinic evaluation through his own insurance.

On 9/28/23 Careworks sent a Utilization Review Recommendation to Williams & Swee, petitioner's attorney, informing them that petitioner's referral to pain management for the cervical and thoracic spine had been certified.

On 10/18/23 petitioner returned to Tharp. He reported no change in his symptoms. He noted that he was still having difficulty with his gait, and his symptoms were worse with movement. Tharp noted that workers' compensation was now approving a consultation with a pain specialist so he was placing a new referral. Petitioner was told to schedule a consultation. All medications remained the same.

On 11/14/23 petitioner presented to Dr. Tariq Niazi, a pain specialist at St. Joseph Medical Center, for his chronic low back pain. He reported that his pain got worse 3 months ago. He reported pain in his low back radiating to his lower extremities to his feet. He reported his worst pain was in his right leg. He reported tingling and numbness. He also stated that he could not stand or walk for a long time due to bilateral lower extremity tingling and numbness and tiredness. He noted that his medications did not provide significant pain relief. Dr. Niazi examined petitioner and reviewed his MRI of the lumbar spine dated 2/16/23. He recommended an L5-S1 lumbar epidural steroid injection interlaminar approach. Dr. Niazi was of the opinion that petitioner's symptoms were worse than the clinical evidence. He was further of the opinion that his medication was complicating the treatment plans. He recommended following WHO guideline on analgesics management for acute or chronic presentation of pain syndromes. He was of the opinion that petitioner's lack of mobility was adding to his inflammatory state. He recommended petitioner continue in physical therapy.

On 12/6/23 petitioner reported to Tharp that his symptoms were better controlled when on Meloxicam and Tramadol, so Tharp sent in refills. He reported persistent symptoms since he was a month without these medications. He reported that his epidural steroid injection was going to be performed on 12/20/23. Tharp noted that he continued to use a cane.

On 12/20/23 and 1/3/24 petitioner was scheduled for an epidural steroid injection at L5-S1. Both times it was cancelled based on correspondence from Lori at Cincinnati WKC on 12/18/23, stating that the injection would not be approved.

On 1/17/24 petitioner reported pain with worsening paresthesias in his left lower extremities. Tharp continued his medications. Petitioner reported that he was still trying to get the epidural steroid injection approved by workers' compensation. He also noted that he was using a cane most of the time for ambulation because his balance was not great, and he had a recent fall, but denied any injury from the fall.

On 2/13/24, 2/14/24, 2/16/24, and 2/17/24, Jeffrey Riggs, Private Investigator with Robertson Group, conducted surveillance of petitioner. (RX16) On 2/13/24 surveillance was conducted from 6:51 am to 3:00 pm. It began at petitioner's residence located at 1108 South Main Street, Bloomington, IL. During this time petitioner was seen leaving the residence in a Dodge Avenger and driving to McClean County Courthouse. He was videoed walking towards the courthouse, stopping, standing for a minute and walking back towards his vehicle. Petitioner was then seen leaving the courthouse at 11:58 am in his car and returning home. On 2/14/23 surveillance was conducted from 8:45 am to 3:00 pm. During this timeframe petitioner was seen leaving the residence at 2:06 pm, and taking a 13 minute walk to and from Walgreens. On 2/16/24 surveillance was conducted from 12:45 pm to 7 pm, and petitioner did not leave the residence. On 2/17/24 surveillance was conducted from 10:45 am to 3:00 pm. At 1:36 pm petitioner left the residence in a Dodge Avenger and drove to Boost Mobile 3 minutes away. He was in the store for 9 minutes and arrived back home about 3 minutes later.

While conducting surveillance of petitioner, Riggs never saw petitioner use a cane or wear a back brace. He was of the opinion that petitioner got in and out of the car fine and walked quickly. He was also of the opinion that petitioner had a normal gait when he walked to and from Walgreens on 2/14/24. On cross examination Riggs testified that on 2/14/24 he could not be sure if petitioner was wearing a back brace under his jacket. He testified that he saw no bulge on the side or back of petitioner's jacket that would indicate to him that petitioner had a back brace underneath his jacket. Petitioner testified that he was wearing a back brace under his jacket.

On 2/28/24 petitioner followed up with Tharp. He reported that his symptoms were unchanged. Dr. Tharp continued petitioner's medications. Tharp recommended that since workers' compensation had not yet approved the ESI he should use his own insurance because his pain was significant and not well-controlled with current treatment. He referred petitioner to a pain specialist to see if the ESI could be approved through Medicaid. Petitioner requested a renewal of his Handicap Placard. Petitioner reported that he had been using a cane most of the time for ambulation because his balance was not great with his ongoing symptoms. Petitioner was continued off work. Petitioner testified that he received another handicap parking placard at this time.

On 3/13/24 Tharp drafted a letter to “To whom it may concern:”. It stated that petitioner had been seen numerous times over the past year since his work related injury. He also noted that petitioner had been off work since 1/19/23. He stated that due to his debilitating symptoms, petitioner could not clear him to return to normal work duties. He noted that he would see petitioner on 4/10/24. Tharp drafted a note stating that petitioner had been off work since 1/19/23, and he could not return him to normal work activities.

On 4/2/24 petitioner followed up with Dr. Niazi. He stated that he wanted to get the lumbar epidural steroid injection because his pain had been worse. He reported that the pain started in his left lower back and radiated to his left lower extremity and L5-S1 dermatome. Dr. Diazzi recommended petitioner proceed with the epidural steroid injection. He recommended petitioner continue in physical therapy.

On 4/4/24 Dr. Rutz performed a record review, at the request of the respondent. Dr. Rutz reviewed medical records from OSF Healthcare, Carle BroMenn Medical Center, Dr. Naour, Carle BroMenn Medical Center Physical Therapy Clinic, St. Joseph’s Medical Center Physical Therapy Notes, a police incident report from May of 2023, MRI of the lumbar spine from 11/8/17, surveillance video from 5/27/23 when petitioner was taken into custody, and the incident video from Rivian on 1/5/23. Following his review of these records, Dr. Rutz’s impression was chronic low back pain with left leg radiculopathy, and questionable continued aggravation. Dr. Rutz was of the opinion that this was a complicated case. He noted that the video surveillance of the date of injury showed petitioner jumping out of a van somewhat awkwardly, and then manifesting behavior consistent with an acute episode of back pain for which he began treatment. He noted that the history petitioner gave him of being knocked to the ground was not consistent with the original history petitioner provided him. He also found it significant that in multiple parts of the medical record, petitioner was using a cane to ambulate, but when he was taken into custody, he was clearly ambulating without a cane.

Dr. Rutz was of the opinion that the real issue was whether or not petitioner still had a sustained aggravation of his pre-existing degenerative condition, since petitioner clearly had back and left leg pain prior to the injury on 1/5/23, but seemed to have an increase in his symptoms after the accident. He was of the opinion that the primary question was whether he continues to have that. Dr. Rutz noted that when he initially saw petitioner he recommended that things be done in a proactive manner, however, things have been drawn out for quite some time. He noted that the MRIs he recommended took 4 months to be done, and the epidural steroid injection he recommended had yet to be done. Dr. Rutz was of the opinion that it is quite possible that petitioner has returned to his baseline, and if that is the case, then he would be

at maximum medical improvement. He was also of the opinion that it is possible, if the medical records are taken at face value, that he has continued to have an increase in symptoms, as evidenced by multiple visits at OSF Healthcare in which multiple medication regimens were being tried to control petitioner's symptoms.

Dr. Rutz was of the opinion that the path moving forward is relatively simple. He did not think that going to pain management is, "the next logical step". He was further of the opinion that for someone who has had symptoms for over a year, the odds of an injection leading to resolution of symptoms is quite poor. He was of the opinion that petitioner's problem is discogenic back pain, consistent with the findings and symptoms that he had when he obtained his MRI in 2017, as well as the more recent MRI. Dr. Rutz was of the opinion that petitioner should have a choice. He recommended the possibility of surgical intervention which would consist of either a fusion or lumbar disc arthroplasty, for which he should follow up with his surgeon. If petitioner did not want that then he should be returned to work without restrictions. He noted that petitioner has subjective pain complaints, and if he truly has a marked and consistent uptick in symptoms compared to what he had before, then surgery would be appropriate for him. He further noted that if this is more of a simple magnification of symptoms, then he suspected that petitioner is at pre-injury status and he can return to work without restrictions.

When petitioner last saw Tharp on 4/25/24 he reported that his symptoms were unchanged, and he felt that they were getting worse. He stated that he was trying to do more walking.

On 4/25/24 petitioner underwent an L5-S1 lumbar interlaminar epidural steroid injection. This procedure was performed by Dr. Niazi.

On 5/14/24 petitioner followed-up with Dr. Niazi. He reported that the lumbar epidural steroid injection did not provide any pain relief. He reported low back pain radiating to the bilateral lower extremities, worse on the right than the left. Petitioner asked if he could put on a lumbar back brace. Dr. Niazi told petitioner that the lumbar spine does not seem to be unstable and wearing the back brace will worsen the pain. Dr. Niazi started petitioner on Lyrica 50 mg three times a day. He also suggested utilizing non-opioid centrally acting pain medications for his chronic pain. He recommended petitioner continue in physical therapy.

On 5/28/24 respondent's attorney sent an email to petitioner's attorney informing him that her client was willing to authorize the pain clinic injection.

On 6/4/24 Tharp drafted a letter stating that he had seen petitioner numerous times over the past year and that he has been unable to work from 3/13/24 through 6/4/24. He also noted that petitioner has not been cleared to return back to work until further notice.

On 6/18/24 petitioner was in court all day. He testified that he was able to sit through the trial, but he was uncomfortable. Petitioner testified that he was not using a cane, but was wearing a back brace. Petitioner testified he did not drive to or from the courthouse. Petitioner denied that the pain management doctor told him he should not wear the back brace.

Fogg testified that he was subpoenaed to testify in court on 6/18/24. Fogg testified that prior to the proceedings starting he saw petitioner walking around, standing, and talking with his attorney. Fogg stated that after he testified in the trial, he remained in the courtroom to watch the proceedings. He testified that he observed no physical limitations as they relate to petitioner. He did not see petitioner using a cane that day. Fogg testified that he observed petitioner driving after the proceedings were over.

Anthony Lucchesi, an associate attorney for respondent, was called as a witness on behalf of respondent. Lucchesi was asked to attend court on 6/18/24 to observe petitioner. Lucchesi was present in the courtroom from about 8 am to 4 pm. Lucchesi testified that he did not observe that petitioner demonstrate any physical limitations that day. He did not see the petitioner using a cane. He also testified that he did not see any back brace on petitioner, and did not notice him having any difficulty sitting. He testified that he observed petitioner standing as the jury left the jury box, and while his counsel finished speaking to the judge. He stated that petitioner stood between 5-8 minutes each time jury came in and out, and each time his counsel talked to the judge. He estimated that these instances occurred about eight or more times that day. Lucchesi testified that the court may have gone into recess three times during the day.

On 6/20/24 Tharp drafted a letter to "To whom it may concern:" for submission as part of his SSDI Application. Tharp noted that petitioner has had no improvement in any of his symptoms since the 1/5/23 accident despite multiple treatment modalities. This letter indicated that petitioner continues to use a cane for support. Tharp indicated that petitioner reported being "unable to sit or stand for more than a few minutes at a time due to pain." Petitioner also reported to Tharp that "he needs to reposition himself often due to severity of pain which limits his ability to work even with breaks every 2 hours." Tharp opined that "[d]ue to the nature of his ongoing symptoms [Petitioner] would be unable to stand or sit for more than a few minutes at a time and has limited ability to walk without the assistance of a cane. He would also be unable to bend over at the waist, squat down, or lift any weight more than 5 pounds, especially repeatedly." Tharp also stated "the imaging the patient has had done previously does not

appear entirely consistent with the reported symptoms from the patient nor the physical exam findings.” (PX4)

On 6/24/24 the evidence deposition of Kristina Carlton, Director of Safety, Quality & Claims for respondent, was taken on behalf of respondent. She testified that she had a role in trying to get petitioner back to work after his injury on 1/5/23. Her job was to gather all the information, coordinate with the location and terminal manager, and accommodate the order and work restrictions of the treating doctor. She testified that it is respondent’s policy to get everybody back to work, and that is what she helps with. She testified that she learned on 1/12/23 that petitioner could only do ‘sit down’ work, and respondent could accommodate that.

The respondent’s attempts to reach petitioner were outlined in RX10-13. Petitioner testified that he did not receive any calls from respondent with respect to getting him back to work. He testified that he did not recall getting letters from respondent or text messages from Brian Railey because he was on medication. Petitioner denied every getting the letter of 4/25/23 terminating his employment.

- On 1/6/23 at 11 am Brian Railey called petitioner to follow up and see how he was doing after his ER visit. Petitioner stated that he was in some pain and the doctor told him to stay off his feet until Monday.
- On 1/6/23 at 11:30 am Brian Railey texted petitioner to tell him respondent had sit down work available and for petitioner to contact him to discuss.
- On 1/9/23 at 2:47 pm, on 1/10/23 at 2:10 pm, and 1/11/23 at 11 am Brian Railey attempted to call petitioner. He got no answer, but left a voicemail.
- On 1/12/23 Brian Railey got notice from Kristina Carlton that petitioner could return to work with restrictions that were set by Dr. Splitter. Mary Roberts, CMA, the Worker Compensation Coordinator, provided them to Carlton.
- On 1/12/23 Joe Gulik, Area Manager, called petitioner and left a voicemail stating that he was glad petitioner was released to work and how vital it was to keep the lines of communication open between him and Brian Railey.
- On 1/12/23 at approximately 5:00 pm petitioner called Brian Railey to let him know he was prescribed pain medication and that he was unable to drive a vehicle and would respondent be able to supply him with transportation to and from work. Brian Railey asked petitioner to send him pictures of his medications, which petitioner did. He sent a picture of three medication vials.
- On 1/12/23 at 6:00 pm Kristina Carlton got written clarification from Carle Bloomington Occupational Medicine that petitioner could drive to work, just not at work, and that transportation would not be provided.
- On 1/13/23 respondent got a letter from petitioner’s attorney. Respondent sent a certified letter to petitioner and his attorney William Trimble, explaining that respondent could accommodate petitioner’s restrictions. A group text was sent to petitioner, Kristina, Brian and Joe that also explained that respondent could accommodate petitioner’s restrictions. The text stated that

petitioner was to report to work on 1/16/23 at 8 am, and his restrictions would be accommodated. Petitioner's attorney was also sent a copy of the certified letter that was sent to petitioner on 1/13/23 informing him that respondent could accommodate his restrictions and he was to report to work on 1/16/23 at 8 am. Petitioner did not respond. A copy was provided to Work Comp Specialist Lori Amundson.

- On 3/1/23 a letter was sent to petitioner and his attorney William Trimble requesting written documentation to support his absence from work since 1/27/23. The letter informed petitioner that his absence from work was considered unexcused and failure to provide the requested documentation may result in his termination of employment.
- On 4/3/23 Jennifer Burke, Director of Human Resources, made a phone call and sent a text to petitioner requesting documentation for his absences. Petitioner did not respond.
- On 4/25/23 Jennifer Burke sent a letter to petitioner informing him that since he had not responded to her written request on 3/1/23 and follow-up call and text message on 4/3/23 for documentation supporting his continued absence from work since 1/27/23, that his absence is considered unexcused and his employment with respondent was terminated.

Petitioner testified that he never gave his off work slips to respondent, because he was told not to talk to them. He testified that he was pretty sure he gave his off work slips to his attorney to provide respondent. Then he stated maybe he did, maybe not, because he was on medication.

Respondent paid petitioner temporary total disability benefits from 4/28/23-5/22/24. (RX17) All checks posting dates were within the period of the temporary total disability period they were being issued for.

Petitioner testified that currently he is taking medication and doing a home exercise program for his symptoms. He also testified that he walks a little. Petitioner testified that the brace he was wearing at trial was not prescribed by any doctor. Petitioner testified that he had it from treatment he had before his injury on 1/5/23. He testified that he wears it to stabilize his back, because when he walks or lies down it hurts. Petitioner also testified that the cane he uses was not prescribed by any doctor. He testified that he uses it because his left leg goes out.

Petitioner testified he has constant pain from his lower back to his toes, and he is stiff and numb. He also testified that his toes are always tingling. He stated that when he wakes up in the morning he has pain and throbbing. Petitioner stated that his pain affects his sleep.

On cross examination petitioner testified that he treated consistently for his back from 2012 to 2021, and during that period he tried a bunch of different medications and physical therapy. During that period he also saw a pain clinic doctor and a neurosurgeon, but nothing helped him. Petitioner testified that from at least 2015 to 2021 he had symptoms going into both his feet and toes, and he had difficulty

standing. During this period petitioner also had difficulty working, and walking distances, and had to use a cane due to his back pain.

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

Petitioner alleges that his current condition of ill-being of as it relates to his lumbar spine is causally related to the injury he sustained on 1/5/23. Respondent disputes. It is un rebutted that prior to the injury on 1/5/23, petitioner had a chronic back condition dating back to at least 2014. From 2014 through 4/20/21 petitioner treated for this condition. During this time petitioner was in therapy, was taking medication, and was using a cane and back brace. He also underwent x-rays, CT scan and MRIs. His most recent MRI of his lumbar spine prior to the accident on 1/5/23 was on 11/8/17 after an acute exacerbation of chronic low back pain. The impression was mild degenerative disc disease at lower 2 segments with small disc herniations at L4-L5 and L5-S1. Thereafter, petitioner continued to follow up for chronic low back pain and bilateral leg pain. Petitioner also underwent additional therapy that he stated helped, and then did not, so he stopped going. He often rated his back pain between 8-10 on a scale of 10. On 3/2/18 he was diagnosed with lumbar radicular pain in the setting of a disc herniation and significant degeneration at L5-S1, that was likely a chronic condition. Even then, Dr. Naour discussed an epidural steroid injection with petitioner, however, Dr. Naour was not certain it would provide petitioner with any benefit. On 3/2/18 petitioner was referred for a surgical evaluation. Petitioner believed it was because his condition was more of a surgical condition. Petitioner testified that he saw a neurosurgeon, but no neurosurgeon records prior to 1/5/23 were offered into evidence.

Petitioner continued to treat for his lumbar spine pain, as well as lower left leg pain and numbness that shoots to his toes at times. On 9/3/20 he was referred to pain management for a left SI injection, or other appropriate treatments for pain management. There are no records to support a finding that petitioner ever underwent an injection before 1/5/23. On 4/30/21 he began a course of physical therapy for his neck and back pain.

On 1/5/23 petitioner sustained his accident in this case. RX14 clearly shows that as petitioner was stepping out of the van side doors, the van began to slowly pull away. Petitioner twisted as he stepped out grabbing the back side door. He then stumbled to a standing position on the ground. Petitioner then closed both doors. Another person then got out of the front passenger door of the van and they both began to walk together. Petitioner began walking with a significant limp as soon as the other passenger exited the front passenger door. In the next clip, petitioner is seen walking alone near the bathroom with a normal gait and pace, while looking at his phone before placing it in his rear pocket and entering the bathroom. Petitioner is next seen stumbling out of the bathroom, turning and looking around, and

grabbing his lower back. Petitioner is then seen approaching the stairs of the trailer with his hand on his back with a significant limp. However, as he ascends the stairs with his hand on his back, he is seen transcending the 4 stairs without any difficulty or limp, and without holding the railing. At the top of the steps petitioner is seen opening the office door and stumbling into the office trailer. In the final clip, the petitioner is seen being walked out of the trailer, and down the stairs one at a time, with the help of two EMTs. Petitioner is then placed on the gurney and taken away.

The arbitrator finds the petitioner's movements in RX14 inconsistent and calculating. After he stumbles from the van he is able to close the side doors without much difficulty, but as soon as the other person exits the van, he begins a very exaggerated limp. Then, when petitioner is next seen approaching the bathroom he is walking normally without a limp, looking at his phone before placing it in his back pocket before he enters the bathroom. He enters the bathroom without any difficulty, and then as he exits he stumbles out, turns, and then looks around grabbing his low back. He then holds his back and limps somewhat to the stairs of the trailer, before walking up the 4 stairs without any difficulty, and without even holding the railing. He only had his hand on his low back. Petitioner then opens the office door and stumbles into the office trailer. When the ambulance arrives petitioner is seen walking down the stairs one step at a time, with the help of the EMTs, before being placed on the gurney. The arbitrator finds the inconsistencies in petitioner's ability to move about in these videos bring into question whether or not petitioner's injuries were actually as severe as he claimed.

The ambulance report notes that petitioner complained of mid thoracic back pain. Then at the emergency room petitioner complained of moderate back pain. The CTs of his lumbar, thoracic and cervical spine showed no acute fractures or findings. Next, he presented to Bloomington Empire Occupational Health and Employee Health on 1/12/23 for primarily thoracic and lumbar spine pain. He denied any lower extremity pain, numbness or tingling, but was ambulating with a cane. Petitioner admitted no one prescribed the cane for him. He was prescribed physical therapy and released to modified duty work that involved only sitting work. Petitioner did not return to modified work, nor did he respond to respondent's calls, texts, or emails, other than to state he could not drive and ask if he could get transportation to work. When respondent attempted to reach him to tell him no transportation was going to be provided because the doctor said it was not necessary, petitioner did not respond. Instead, he sought treatment elsewhere.

On 1/19/23 petitioner began treating with Andrew Tharp, a certified nurse practitioner. Petitioner told Tharp that he was hardly able to get out of bed due to his pain, and that sitting or standing for even a short time caused increased pain. He also, for the first time since the accident, reported radiating pain to

his left lower extremity with numbness in all of his toes on the left foot, and three toes on the right foot. He also, for the first time, reported weakness in both lower extremities. Based on these subjective complaints, Tharp added Meloxicam and Gabapentin to the Flexeril he was already prescribed at the emergency room. He also took petitioner off work through 1/27/23.

Petitioner underwent an initial physical therapy evaluation. He was prescribed 4 weeks of physical therapy, but stopped going after 7 visits.

Petitioner continued to treat with Tharp and underwent an MRI on 2/16/23 that showed low grade degenerative disc disease at L4-L5 and L5-S1 with small disc herniations without any significant progression since the prior MRI study of 11/8/17. The arbitrator finds it significant that this MRI taken after the accident on 1/5/23 showed no acute changes from the MRI study of 11/8/17, which was before Dr. Naour recommended that petitioner undergo an ESI and referred him for a surgical evaluation on 3/2/18. Based on this evidence, the arbitrator again questions the extent of the petitioner's injuries as a result of the injury on 1/5/23, given that the treatment being recommended after 1/5/23 was the same treatment that was recommended on 3/2/18, after the MRI of 11/8/17.

Petitioner continued to treat with Tharp with essentially no improvement. On 4/12/23 he reported that his pain and weakness continued to limit his daily function and ability to walk at times. Petitioner continued in and out of physical therapy.

Respondent first had petitioner examined on 4/25/23 by Dr. Rutz. Petitioner told Dr. Rutz he fell to the ground when he fell out of the van, which the arbitrator notes is untrue. Petitioner also told Dr. Rutz that he was having balance problems and was using a cane. However, he failed to mention that the cane was not prescribed by any healthcare provider, or the fact that he had balance problems and used a cane before the accident on 1/5/23. Dr. Rutz was of the opinion petitioner had discogenic low back pain with left radicular features and had sustained an aggravation of a preexisting degenerative condition. He was of the opinion that the goal was to get petitioner back to his pre-accident condition, which was not perfect, but he could work without restrictions and still have some symptoms.

On 5/25/23 petitioner was involved in an altercation with his friend. They got in a fight and his friend ended up on the ground. Petitioner testified that he did not hit his friend or cause him to fall. He stated that his friend swung at him and he dodged the swing and his friend fell flat on his face on the ground. He testified that he thought his friend was dead, so he nudged him with his foot. When he saw his friend move he knew he was alive, and left. Although petitioner testified that he could not drive while on medication, he was left the scene of the altercation in his car. However, a passerby, by the

name of Fogg, saw something entirely different. Fogg witnessed petitioner and his friend in an altercation that was getting close to the street. Fogg was driving, so he slowed down. He noticed one person fall to the ground, and the other person, who was the petitioner, remain standing swinging his arms and kicking the person on the ground. Based on the petitioner's movements during the altercation, Fogg testified that petitioner appeared to have no physical limitations.

On 5/27/23 the police visited petitioner at a home. (RX15) The video shows petitioner exiting the front door of a home and quickly descending the 5 steps down from the porch to the ground without using the handrail, and in no apparent distress. Petitioner is also seen walking from the bottom of the stairs to the police officer at a normal pace without any limp or any other limitation. Petitioner did not appear to be in any physical distress, and was not using a cane. Petitioner is then viewed walking from the home to the officer's police car (approximately 40 seconds) using a normal gait and pace, and in no apparent physical distress. During this period petitioner is seen talking to the officer about the case, and making absolutely no complaints of any low back or leg pain. Petitioner was next seen getting in and out of the back of the police car with his hands cuffed behind his back without any difficulty. He is also seen walking from the back of the police car to the police station at a normal pace with a normal gait. He is then seen sitting down on a bench with his hands cuffed behind his back without any difficulty.

Petitioner resumed seeing Tharp on 7/17/23 with same or worsening complaints. By this date, Tharp had petitioner on Meloxicam, Gabapentin, Baclofen and Duloxetine, without any improvement in his complaints. As time went on Tharp increased petitioner's dosages of Cymbalta and Gabapentin. A pain clinic referral was requested, and on 9/28/23 it was approved.

Petitioner saw Dr. Niazi for pain management on 11/14/23. He reported that his pain worsened three months ago. He reported the same low back pain complaints radiating to his lower extremities, but stated that his right leg was now worse. He also complained of tingling, numbness, and weakness in his legs. Dr. Niazi was of the opinion that petitioner's symptoms were worse than his clinical presentation. The arbitrator finds this consistent with the video depictions of petitioner on 5/27/23 (RX15) and on 1/5/23 (RX14). Dr. Niazi was also of the opinion that the medications he was taking were complicating his treatment plan. He recommended following the WHO guidelines on analgesics management for acute or chronic presentation of pain syndrome. He also added that petitioner's lack of mobility was adding to his inflammatory state. An epidural injection was recommended. Respondent denied this based on petitioner's increased pain and worsening right leg pain, which was different from his left leg complaints following the injury.

Petitioner continued to treat with Tharp, and Tharp continued the same medication regimen. On 1/17/24 petitioner reported a recent fall, but denied increased symptoms. Petitioner reported that he was using a cane most of the time for ambulation because his balance was not great. Again, no doctor ever prescribed the use of a cane or back brace for petitioner. Even Dr. Niazi stated that his lumbar spine was not that unstable and a back brace would only make it worse.

Video surveillance of petitioner was taken on 2/13/24, 2/14/24, 2/16/24 and 2/17/24, and they show a story different from what petitioner was reporting to his healthcare providers. (RX16). On 2/13/24 he is seen walking from his car to the courthouse and then walking back. He is not using a cane, his gait is normal, and he appears to be in no physical distress. On 2/14/24 petitioner is seen leaving his home and walking to Walgreens which is 5 minutes away. Petitioner is observed walking there and back without a cane, with a normal gait, and in no apparent physical distress. Petitioner's walk to the store and back took about 13 minutes. Upon his return home petitioner is seen walking up at least 5 steps of his front porch without any difficulty, or the need to use the handrail while walking up the stairs. On 2/17/24 he was observed entering the Boost Mobile Store without a cane. Petitioner was observed driving on 2/13/24 and 2/17/24, even though he kept saying he could not drive while taking pain medication.

On 4/4/24 Dr. Rutz performed a record review after reviewing additional medical records, as well as video surveillance of petitioner (RX13, RX14, RX15). Dr. Rutz's impression included questionable continued aggravation. Dr. Rutz found it significant that in multiple parts of the medical records, petitioner noted that he used a cane to ambulate, but when he was taken into custody, he was clearly ambulating without a cane. Dr. Rutz was of the opinion that the real issue was whether or not petitioner still had a sustained aggravation of his preexisting degenerative condition, since the petitioner clearly had back and left leg pain prior to the injury on 1/5/23, but seemed to have had an increase in his symptoms after the accident. The primary question was whether or not petitioner continued to have that. He opined that if petitioner has returned to baseline, then he would be at maximum medical improvement. He noted that if the records were to be taken at face value, then petitioner has continued to have an increase in his symptoms. Dr. Rutz was of the opinion that if the records were to be taken at face value the chances of an epidural steroid injection leading to a resolution of petitioner's symptoms was quite poor. He assessed discogenic back pain consistent with the findings and symptoms petitioner had when he had his MRI in 2017, as well as the more recent MRI. He was of the opinion that petitioner could undergo a fusion or lumbar disc arthroplasty, for which he should follow up with his surgeon. If petitioner did not want surgery he could return to work without restrictions.

Given the videos of petitioner being questioned and taken into custody on 5/27/23, as well as the video surveillance of petitioner in February of 2024 (RX15, RX16), the arbitrator finds the medical records cannot be taken at face value since they are clearly inconsistent with how the petitioner acted while being questioned by the police and taken into custody, and how he acted while under video surveillance on 2/13/24, 2/14/24, 2/16/24, and 2/17/24. If one was to take the medical records at face value, petitioner would not be able to ambulate for long periods of time, or walk without an altered gait without losing his balance, and need a cane. However, a viewing of RX15 and RX16 clearly show petitioner is able to walk long distances without an altered gait, without losing his balance, and without a cane. These videos also show he is able to walk up and down stairs without any difficulty and without even holding the railing. Additionally, the arbitrator finds that there are even more instances of these inconsistencies on 1/5/23, immediately after the accident, when petitioner was with someone else from the van, when he was approaching the bathroom, and then while he was walking up the stairs to the office trailer. (RX13)

When petitioner finally had the epidural steroid injection on 4/25/24 it did not result in any improvement in his condition. The arbitrator finds this consistent with the opinions of Dr. Naour and Dr. Rutz, who both were of the opinion that it would not be helpful.

On 6/18/24 petitioner was observed in court sitting for lengthy periods of time, and standing for up to eight minutes at a time, multiple times throughout the day. He was also observed without a cane for the entire day. Fogg testified that he was in the courtroom the latter half of the day, and petitioner did not appear to be in any physical distress. Lucchesi, from respondent's office, was in court all day, and testified that he also did not see petitioner use a cane, or appear to be in any physical distress.

On 6/20/24 petitioner requested, and obtained a disability letter from Tharp specifically for the purposes of his SSDI disability claim. (Pet. Ex. 4). Tharp noted that petitioner had no improvement in any of his symptoms since the 1/5/23 accident despite multiple treatment modalities. This letter indicated that petitioner continued to use a cane for support. Tharp indicated that petitioner reported being "unable to sit or stand for more than a few minutes at a time due to pain." Petitioner also reported to Tharp that "he needs to reposition himself often due to severity of pain which limits his ability to work even with breaks every 2 hours." Tharp opined that "[d]ue to the nature of his ongoing symptoms [Petitioner] would be unable to stand or sit for more than a few minutes at a time and has a limited ability to walk without the assistance of a cane. He would also be unable to bend over at the waist, squat down, or lift any weight more than 5 pounds, especially repeatedly." Tharp also stated "the imaging the patient has had done previously does not appear entirely consistent with the reported symptoms from the patient nor the

physical exam findings.” (Pet. Ex. 4, p. 2). The arbitrator finds Tharp’s assessment of petitioner in this letter to be entirely inconsistent with RX15 and RX16, and his physical abilities in court on 6/18/24, and the fact that petitioner continued to drive, despite testifying he could not. None of what is documented in this letter is consistent with the ease in which petitioner was able to walk without any altered gait, without a cane, and without any apparent physical distress; the fact that petitioner walked 13 minutes to and from Walgreens with no altered gait, no cane, and in no apparent physical distress; that petitioner was able to ascend and descend stairs without any difficulty and without use of the handrails; that petitioner was able walk with his hands handcuffed behind his back without any altered gait, without a cane, and without any apparent physical distress; and, that petitioner was able to sit with ease while his hands were cuffed behind his back. Also, at no time while petitioner was with the police officers on 5/27/23 did he voice any concerns regarding his low back or legs.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being as it relates to his lumbar spine is causally related to the accident he sustained on 1/5/23 after 5/26/23. The arbitrator finds the petitioner’s current condition of ill-being as it relates to his lumbar spine had returned to its baseline level by 5/27/23.

The arbitrator bases this finding on the extensive treatment petitioner had for his low back prior to the injury on 1/5/23; that petitioner’s complaints in the treating records prior to 1/5/23 were the same as they were after 1/5/23; that petitioner was prescribed an epidural injection prior to 1/5/23 that was never done; that petitioner was also referred to a surgeon for surgical consult prior to 1/5/23; and, that petitioner’s complaints to Tharp are totally inconsistent with the video taken of petitioner when he was arrested on 5/27/23, as well as the video surveillance of petitioner in February of 2024, and his behavior in court on 6/18/24.

Additionally, the arbitrator finds the opinions of Dr. Rutz far more persuasive than those of Tharp, who continued to take everything petitioner told him at face value, continued to prescribe drugs not consistent with the WHO Guidelines of analgesics management for acute and chronic presentation of pain syndromes, and continued to authorize petitioner off work. The only doctors who found petitioner’s subjective complaints inconsistent with the objective findings were Dr. Niazi and Dr. Rutz, who both felt the petitioner’s subjective complaints were clearly in excess of the diagnostic findings. The arbitrator also finds it significant the findings on the MRIs of the lumbar spine after the accident on 1/5/23 were the same as that of the MRI of the lumbar spine taken 11/8/17; that both Dr. Naour before the accident, and Dr. Rutz after the accident, did not think an epidural steroid injection would be of much benefit, and after

petitioner had it, it was not; and, that both Dr. Naour before the injury, and Dr. Rutz after the injury, referred petitioner for a surgical consultation. The arbitrator finds the opinions of Dr. Rutz more persuasive than those of Tharp, given that they are more consistent with the credible evidence.

The arbitrator also finds the petitioner's testimony to be unsupported by the credible record, and therefore less than persuasive. The arbitrator finds this was most prevalent when petitioner denied saying things that were on the video, and at times even denied that he was the person in the videos. The arbitrator also questions the credibility of petitioner's complaints to his healthcare providers, given his movements on the video during his arrest of 5/27/23, while he was surveilled in February 2024, and in court on 6/18/24.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

Having found the petitioner's current condition of ill-being as it relates to his lumbar spine is causally related to the injury on 1/5/23 only through 5/26/23, the arbitrator finds the respondent shall pay reasonable and necessary medical services for the treatment of petitioner's lumbar spine from 1/5/23 through 5/26/23, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of \$12,117.64 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.

K. IS PETITIONER ENTITLED TO ANY PROSPECTIVE MEDICAL CARE?

Having found petitioner's current condition of ill-being as it relates to his lumbar spine is causally related to the injury on 1/5/23 only through 5/26/23, the arbitrator finds the petitioner is not entitled to any prospective medical expenses.

L. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Having found petitioner's current condition of ill-being as it relates to his lumbar spine is causally related to the injury on 1/5/23 only through 5/26/23, the arbitrator will only look at the period from 1/5/23 through 5/26/23, as it relates to the issue of temporary total disability benefits.

Following the injury on 1/5/23 petitioner was authorized off work until 1/9/23 by the doctor at the emergency room. On 1/12/23 petitioner was restricted to "sitting work" only, by Bloomington Empire Occupational and Employee Health. From 1/19/23 through 5/26/23 Tharp continually authorized petitioner off work.

Based on the above, the arbitrator finds that between 1/5/23 and 5/26/23 the petitioner was temporarily totally disabled from 1/6/23 through 1/9/23, and 1/19/23 through 5/26/23. The arbitrator finds the petitioner had no off work note for the period 1/10/23 through 1/18/23 when he had a modified duty work authorization that he refused to even try. Petitioner claims he was never made aware of the modified duty. However, the records show that petitioner was aware, because he called Railey on 1/12/23 and stated he could not try the modified work because he was on pain medication and could not drive. He then asked if respondent could provide transportation. That same day, confirmation was received that petitioner did not need transportation, and respondent sent notice of this to both petitioner and his lawyer. Neither responded back to respondent. Respondent's attempts to reach both petitioner and his attorney continued through early April of 2023. When neither petitioner nor his attorney ever responded, respondent terminated petitioner on 4/25/23. The arbitrator finds the petitioner less than credible when he states that he never talked to anyone with respondent, and never got any communication from respondent.

The arbitrator finds the petitioner was temporarily totally disabled from 1/6/23 through 1/9/23, and 1/19/23 through 5/26/23, a total of 18-6/7 weeks. These periods of temporary total disability are based on visits petitioner had with Tharp, where Tharp after his examination took, or continued, petitioner off work. Respondent is entitled to a credit for temporary total disability benefits paid in the amount of \$19,359.90.

M. SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT?

Having found that there was no delay in medical treatment prior to 5/26/23, and that an actual dispute did exist as to whether or not petitioner was entitled to temporary total disability benefits in the period between 1/5/23 and 5/26/23, given petitioner's failure to even attempt the modified "sitting only" work accommodation recommended by Bloomington Empire Occupational and Employee Health on 1/12/23, the arbitrator finds no penalties or fees are imposed upon respondent.

N. IS RESPONDENT DUE ANY CREDIT?

All findings regarding credit for medical expenses and temporary total disability is addressed in Sections K and L of the Conclusions of Law, respectively, as well as in the Order Section of this Arbitration Decision.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC010280
Case Name	Nicholas Shinkey v. SCI Corporation
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0393
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Scott Moran
Respondent Attorney	Katrina Robinson

DATE FILED: 9/18/2025

/s/Kathryn Doerries, Commissioner

Signature

23WC010280

Page 1

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Nicholas Shinkey,
 Petitioner,

vs.

NO. 23WC010280

SCI Corporation,
 Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed December 23, 2024, is hereby affirmed and adopted.

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

23WC010280

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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 \$52,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 18, 2025

o-9/9/25

KAD/sj

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/s/ *Kathryn A. Doerries*

Kathryn A. Doerries

/s/ *Stephen J. Mathis*

Stephen J. Mathis

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC010280
Case Name	Nicholas Shinkey v. SCI Corporation
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	John Popelka
Respondent Attorney	Katrina Robinson

DATE FILED: 12/23/2024

/s/ Roma Dalal, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF DECEMBER 17, 2024 4.16%

STATE OF ILLINOIS)
)SS.
 COUNTY OF KANKAKEE)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Nicholas R. Shinkey

Employee/Petitioner

v.

SCI Corporation

Employer/Respondent

Case # **23** WC **010280**

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 **Kankakee**, on **October 31, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **April 7, 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 **\$32,783.72 (48 weeks)**; the average weekly wage was **\$682.79**.

On the date of accident, Petitioner was **41** 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 **\$3,191.01** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$5,000.00** for other benefits, for a total credit of **\$8,191.01**.

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

ORDER

Pursuant to Section 8(a) of the Act, the Respondent shall authorize and pay for, pursuant to the fee schedule, the treatment recommended by his treating physicians in regards to his low back, to include but not limited to surgery.

Respondent shall pay to Petitioner the reasonable and necessary medical services, pursuant to the medical fee schedule, balances of all medical providers in Exhibit #5 as outlined in the decision, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

Respondent shall pay Petitioner temporary total disability benefits of \$455.33/week for 60-67 weeks, commencing April 8, 2023 through April 16, 2023; August 24, 2023 through October 9, 2023, and October 26, 2023 through October 31, 2024, as provided in Section 8(b) of the Act. Respondent shall receive credit for amounts paid.

Petitioner's request for penalties and fees is denied.

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

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

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

A handwritten signature in black ink, appearing to read "Roman Dalak", written over a horizontal line.

Signature of Arbitrator

December 23, 2024

ICArbDec19(b)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NICHOLAS SHINKEY,)
 Petitioner,)
)
 v.) Case No. 23WC010280
)
 SCI CORPORATION)
 Respondent.)

STATEMENT OF FACTS

This matter proceeded to hearing on October 31, 2024 in Kankakee, Illinois before Arbitrator Roma Dalal on Petitioner's 19(b) Petition. Issues in dispute include causation, medical bills, TTD benefits, prospective medical, and penalties. (Arb. Ex.1, T.4).

Nicholas Shinkey (hereinafter referred to as “Petitioner”) was employed at SCI Corporation (hereinafter referred to as “Respondent”) on April 7, 2023. (T.8). Petitioner testified he worked in quality assurance and as a warehouse clerk. In his quality assurance position, Petitioner would check over outgoing material to confirm the correct parts and quantities were being shipped. He would also check on outgoing orders and correct any issues. (T.9). As a warehouse clerk, he would pull parts and place them in bins and log the part numbers and the quantity for each order. (T.11). Petitioner would be on his feet about 90% of the day, lifting a maximum of 70 pounds, but usually between 5 and 40 pounds. (T.13).

On April 7, 2023 Petitioner was pulling a box of parts overhead and felt a pop in his low back. (T.14). Petitioner felt immediate pain in his legs. (T.13). He advised his supervisor, Bucky. Bucky helped him to his car and drove him to his house. (T.16). During the trip home, Petitioner called Allen Riss, his boss, to tell him he was going to the emergency room. (T.17).

Petitioner proceeded to OSF St. Elizabeth Medical Center emergency room. (T.17). Petitioner provided a history and received a shot of Dilaudid. Petitioner was diagnosed with acute low back pain and kept off work until April 12. (T.18).

Petitioner testified he previously injured his back on October 18, 2019 while working for Respondent. (T.18). During that accident he was moving a box of parts at waist level and felt back pain. Petitioner underwent a L4-5 microdiscectomy on May 19, 2020 performed by Dr. Dinh. Petitioner was eventually released to full duty work as of November 2, 2020. (T.19). Petitioner returned to his position in quality assurance. Between November 2, 2020 and April 7, 2023 Petitioner worked full duty. Petitioner noted that during this period he would have flare-ups if he overexerted himself. He would utilize over the counter medication as needed and follow up with Dr. Love. (T.20).

Petitioner testified the pain he experienced after the April 2023 accident was different, more intense, and severe. (T.21). He also noted more pressure and shooting pain down his tailbone. (T.21). Petitioner resumed treatment with Dr. Love on April 11, 2023. (T.22). Petitioner eventually returned back to work as he needed to make money. (T.23). Petitioner saw Dr. Love on April 19 and was referred to orthopedic surgery. Petitioner was eventually recommended an MRI that he underwent on May 2, 2022. Petitioner was seen by Dr. Cary Templin at IBJI on May 16, 2022. (T.23). Dr. Templin recommended light duty work and physical therapy. Petitioner testified he underwent physical therapy at OSF St. Elizabeth which intensified his pain. (T.24). Petitioner testified he was recommended an injection and underwent aquatic therapy. (T.25). Petitioner continued to see Dr. Love on July 24 and August 23, where he was taken off work. Petitioner was referred to Dr. Rehman who recommended a bilateral transforaminal epidural steroid injection. (T.27).

Petitioner was then seen for a Section 12 examination with Dr. Kern Singh on October 2, 2023. Petitioner testified Dr. Singh spent approximately 2 minutes with Petitioner. (T.28). Dr. Singh opined Petitioner could return to work regardless of Drs. Templin, Rehman and Love who opined he should remain off work. (T.29). Petitioner, however, returned to work as of October 10, 2023. Petitioner noted increased pain during work. He felt shooting pain into his low back, into his buttocks, past his thighs into his feet. (T.29). Petitioner was then taken off of work by Dr. Love as of October 26, 2023. (T.30).

Petitioner eventually underwent an injection on December 18, 2023 with Dr. Rehman which provided no improvement. (T.31). Petitioner returned to Dr. Rehman on January 29, 2024 who recommended a second transforaminal epidural injection. (T.32).

Petitioner was examined by Dr. Singh again on January 31, 2024 and was released to return to work full duty. Petitioner attempted again to return to work on February 7, 2024. (T.32). Petitioner noticed that his pain was severe enough that he could not function or work. He only worked for three hours. He once again returned to Dr. Love who took Petitioner off of work. (T.33).

Petitioner eventually underwent his second injection on February 26, 2024, noting a 20-25% relief. Petitioner returned to Dr. Templin who recommended a repeat MRI. Based on the MRI, Dr. Templin recommended a L4-5 and L5-S1 fusion. (T.34). Petitioner testified he saw Dr. Love on May 22, 2024 and began utilizing a cane. (T.34). The cane was not prescribed. (T.35).

Petitioner eventually came under the care of Dr. Darwish as Dr. Templin had left Illinois Bone and Joint Institute. Dr. Darwish also recommended an L4-L5, L5-S1 transforaminal fusion. (T.35).

Petitioner testified he is requesting the surgery be authorized. Currently, Petitioner testified he still has low back pain across his pain and shooting pain bilaterally down his legs. He further noted issues with standing and pain in the tailbone. (T.37). Lastly, he noted he had issues sleeping, getting in and out of cars and the need to get assistance rails for showering. (T.38).

On Cross-Examination, Petitioner admitted the assistant shower rail was already installed when he bought the house prior to the April 2023 injury. (T.39). Petitioner confirmed that he pulled on the box and as he pulled, he felt a pop. He confirmed that it was a pulling motion and never actually lifted the weight. (T.40).

On Re-Direct, Petitioner testified his symptoms were aggravated even by sedentary work in October 2023. (T.49) He also testified he had to get a ride to see Dr. Darwish on October 30, 2024, and stay overnight, since being in the car for an extended period of time was incredibly difficult and aggravated his pain levels. He testified he stayed in the hotel despite the fact that he had not been receiving any benefits for a year. (T.50)

Gerald Allen Riss

Gerald Allen Riss testified on behalf of Respondent. (T.52). He has worked for of SCI Corporation since 1988, became the co-owner 1994, and is also the operations manager. Mr. Riss testified that he is familiar with all aspects of the company, including Petitioner's job duties. (T.52-53). He was aware of the prior accident and Petitioner's return to full duty work and was also made aware of the accident on April 7, 2023, by Petitioner's phone call to him. (T.54-55) He stated it was accurate that Petitioner lifts between 5 and 40 pounds on a regular basis and splits his time equally between the two different jobs. (T.55) He further testified that when Petitioner returned to light duty work in April 2023, he did not do any warehouse work. (T.56) He acknowledged that even though Dr. Singh released Petitioner to full duty work and there were then competing doctors' opinions regarding work capacity, he made the decision that Petitioner would only perform light duty work in October 2023. (T.56-57). He further knew Petitioner was on pain medicine so restricted his duties as far as driving vehicles. (T.58). Mr. Riss testified that timecards accurately reflect Petitioner's hours worked in October 2023. (T. 58-59). Between October 12, 2023 and October 26, 2023, Petitioner worked six 8-hour days; one 4.5-hour day; one 6.5-hour day; and one 2-hour day. (RX4).

Brian Morris

Respondent also presented Brian Morris, a private investigator with Robeson Group. (T.60). He obtained surveillance of Petitioner on four different occasions, January 23, 26, 27 and 31, 2024. (T.61) He did not have any video to show for the first three days, but on the last day he observed Petitioner. On the fourth day, January 31, 2024, Mr. Morris observed Petitioner and his significant other engaging in activity, which was shown in the video. (T.62, 65; RX11 beginning at 1 minute 20 seconds). The video shows Petitioner and his significant other walking from the hotel to a vehicle. (T.65-66; RX11). Petitioner walked to a car wearing a backpack, carrying a sack, and without a cane. He bent forward to put his backpack and sack in the back seat and entered the vehicle. Mr. Morris followed Petitioner's car to a marijuana dispensary. (T.66; RX11). Petitioner entered the dispensary, then exited the dispensary with a purchase in a bag, and again entered the car. Mr. Morris next followed Petitioner's car to his residence. (T.67; RX11). The video shows Petitioner walking up the front stairs while wearing a backpack and carrying sacks and entering the residence.

On Cross-Examination, Mr. Morris testified he didn't think Petitioner was walking with a limp out of the hotel, but he did walk slower. (T.69) He also testified that he shot only 4 minutes and 48 seconds of footage over the 4 days that he was surveilling Petitioner. (T.68)

Petitioner placed outstanding medical bills from Central Illinois Radiological Associates, Hinsdale Orthopaedics, Modern Pain Consultants and Ottawa Osteopathic physicians into evidence. (PX5). Respondent placed medical payment ledgers into evidence documenting what medical treatment was previously paid. (RX1). Respondent also placed TTD and advance payment ledgers into evidence. (PX2).

Medical Summary

Medical records confirm that Petitioner continued to experience low back pain and symptoms following surgery. On December 23, 2019, Petitioner presented to Dr. Khan at Modern Pain Consultants. He presented with lumbar pain and bilateral lower extremity pain, which he described as sharp; shooting; tense; stabbing; piercing; radiating; and exacerbated with lifting, bending, standing, walking, transitional movements, and climbing. Dr. Khan administered a transforaminal lumbar epidural steroid injection bilaterally at L4-5. Physical therapy was offered, but Petitioner declined. (RX9, p.1-5).

On February 3, 2020, Petitioner returned to Modern Pain Consultants and was seen by Nurse Practitioner Dubik. His complaints were overall unchanged. He claimed limited functional status and limitations with walking and prolonged activities. Petitioner admitted to using THC and over-the-counter medications as well as prescribed opioids; he was cautioned against concurrent use of THC and opioids. Petitioner was prescribed more medication. (RX9, p.6-9).

On February 10, 2020, Petitioner returned to see Dr. Khan. Petitioner complained of lumbar pain and radiation into his bilateral lower extremities. Dr. Khan noted Petitioner's October 28, 2019 lumbar MRI showed degenerative spondylosis principally evident at L4-S1, and an L4-5 superiorly extruded disc protrusion in a broad-based fashion with left lateral recess encroachment along the central spinal canal. Dr. Khan administered bilateral TFESIs at L4-5 under sedation. (PX2, p.142-144; RX9, p.10-13).

On February 24, 2020, Petitioner returned to see NP Dubik, and reported 10% to 15% improvement for 2-3 days from the TFESIs. (RX9, p.14-17). On March 17, 2020, Petitioner returned to see NP Dubik. He continued taking Tramadol and Flexeril. He had undergone a second set of injections on March 4, 2020 with no benefit. NP Dubik prescribed Celebrex. *Id.* at 18-21. On March 26, 2020, Petitioner was seen by NP Dubik. On review of symptoms, Petitioner endorsed sleep disturbance, neck pain, bilateral shoulder pain, leg cramps, muscle aches, painful joints, and numbness and tingling. He complained of sharp and shooting low back pain radiating across his low back with associated weakness. He complained of paresthesia in the lateral thigh, leg, and dorsal foot. He reported his symptoms were worse with standing, walking, transitional movements, and weight-bearing. Petitioner reported no more relief with Celebrex than his previous trials of Motrin, Aleve, and Meloxicam. *Id.* at 22-24.

On April 22, 2020, Petitioner was seen by NP Dubik. He inquired about medical cannabis for long-term pain control, and FNP Dubik again cautioned him regarding the appropriate use of his medications. (RX9, p.25-28). On May 29, 2020, Petitioner returned to see NP Dubik following his May 19, 2020 surgery, which was performed by Dr. Dinh. He was taking Norco, Valium, and Flexeril. He still had pain radiating from his back into his flanks. Petitioner inquired regarding medical cannabis for long-term pain. FNP Dubik documented she would discuss the same with Dr. Khan. (RX9, p.29-31). On August 10, 2020, Petitioner returned to see NP Dubik. He reported equally good and bad days depending on activity. He reported a decrease in overall functional capacity due to his pain, and that he relied heavily on opioids. NP Dubik prescribed Norco and Cyclobenzaprine and instructed Petitioner to taper his medications. (PX2, p.139-141; RX9, p.32-34).

On August 24, 2020, Petitioner presented to his primary care physician, Dr. Love at Ottawa Osteopathic Physicians, with paperwork to obtain medical cannabis. (PX2, p.135, 182-184; RX9, p. 35-37). Dr. Love completed an "Illinois Medical Cannabis Patient Program - Health Care Professional Written Certification Form" and checked off the box for chronic pain. There was no other information

regarding Petitioner's medical status, treatment, or history. On October 13 and 27, 2020, Dr. Love prescribed Norco for Petitioner's reported low back pain. (PX2, p. 132, 134).

Petitioner testified that he was released to full duty work on November 2, 2020. (T.19). Mr. Riss testified that, regardless of the full duty release, he and Petitioner had many conversations as to what each saw fit for daily job duties and that Petitioner never returned to his full work duties. (T.54-55). Mr. Riss was aware that Petitioner was on painkillers and, due to safety concerns, Petitioner was additionally restricted from driving vehicles or operating forklifts. (T.57-58).

Petitioner continued to obtain Norco from Dr. Love on a regular basis. Per Dr. Love's certified complete records, he prescribed Norco without examining Petitioner on November 20, 2020; February 5, 2021; and March 17, 2021. (PX2, p.131; RX9, p.38-39). On March 31, 2021, Dr. Love recommended an updated lumbar MRI based on Petitioner's increased subjective complaints of burning and radicular symptoms, and he prescribed Norco. (PX2, p.125, 130, 131, 137, 176; RX9, p. 38, 40-41). Dr. Love continued to prescribe Norco without examining Petitioner; this occurred on April 26, 2021; May 21, 2021; July 7, 2021; August 11, 2021; September 17, 2021; and October 18, 2021. (PX2, p.125, 130; RX9, p.39). On October 18, 2021, Petitioner returned to see Dr. Love and again was prescribed Norco. (PX2, p.124; RX9, p.43). On December 17, 2021 and February 21, 2022, Dr. Love prescribed Norco without examining Petitioner. (PX2 p.124; RX9, p.43). On February 23, 2022, Petitioner complained to Dr. Love of chronic pain with an abnormal gait. (PX2, p.123; RX9, p.44). He reported that another doctor had prescribed pregabalin, which was not helpful. He reported that Norco did help his ongoing pain and he was also using medical marijuana. Petitioner was instructed only to use Norco as prescribed and stop using pregabalin, Dr. Love prescribed more Norco.

On April 20, 2022, Petitioner's settlement contract for 30% loss of use of the person as a whole was approved, closing his medical rights for the October 18, 2019 accident, case 19WC034464.

On April 27, 2022, Dr. Love prescribed Norco without examining Petitioner. (RX9, p.44). On May 25, 2022, Petitioner reported to Dr. Love that his back was "about the same" and Dr. Love prescribed Norco. (PX2, p.122; RX9, p.45). On June 16, 2022 and August 4, 2022, Dr. Love prescribed Norco without examining Petitioner. (PX2, p.122; RX9, p.45). There are no additional medical records after August 2022.

On April 7, 2023, Petitioner presented to Dr. Khan at OSF HealthCare's emergency room. Petitioner reported he was at work trying to get a box off a shelf above his head and started to have low back pain. Petitioner was diagnosed with acute bilateral low back pain with left-sided sciatica. He was prescribed pain medication and discharged. (PX1, p.125-127).

Petitioner called Dr. Love after leaving the emergency room. Dr. Love ordered x-rays of the pelvis and lumbar spine. (PX2, p.29). The radiologist's impression of the April 10, 2023 pelvis x-rays was lumbosacral degenerative disc disease. *Id.* at 56-57. The radiologist's impression of the April 10, 2023 lumbar x-rays was some straightening of lordosis, degenerative changes, and degenerative disc disease at L4-5 and L5-S1. *Id.* at 50-51. On April 11, 2023, Petitioner presented to Dr. Love. He denied any numbness, tingling, or radiation. He described a hot sensation in his buttocks and low back. Dr. Love authorized Petitioner off work. *Id.* at 28-29, 53, 66-68, 89, 91.

Petitioner returned on April 14, 2023. Petitioner was “looking for some more time off from work due to pain.” Dr. Love reviewed the April 10, 2023 x-rays and diagnosed degenerative disc disease. He released Petitioner to return to work with a 5-pound lifting restriction, and prescribed Norco. (PX2, p.27, 52, 65-66, 88).

On April 19, 2023, Dr. Love prescribed medication, recommended additional diagnostic imaging, and referred Petitioner to an orthopedic doctor. (PX2, p. 26, 42, 65, 86). The May 2, 2023 lumbar MRI showed the prior L4-5 left laminectomy, an L4-5 left protrusion, and a small L5-S1 bone spur. The radiologist also noted left paraspinal intramuscular edema at L5-S2, suspicious for myositis, possibly secondary to left L5-S1 facet osteoarthopathy. *Id.* at 40-41.

On May 16, 2023, Petitioner presented to Dr. Templin at Hinsdale Orthopaedics/Illinois Bone & Joint Institute. Petitioner reported he was injured on April 7, 2023 after lifting a box off of a shelf overhead. Petitioner was currently working light duty. Petitioner noted his preexisting lumbar laminectomy in 2020 and has had on and off discomfort but noted the pain was more intense after the work injury. Dr. Templin reviewed the May 2, 2023 MRI and opined it demonstrated disc degeneration at L4-S1 with associated facet hypertrophy, and a leftward L4-5-disc protrusion with lateral recess stenosis. He diagnosed Petitioner with acute low back pain with left sided radiculopathy and underlying L4-S1 disc degeneration; facet hypertrophy; and a left L4-5-disc herniation. Petitioner was to continue light duty work (5-pound lifting, limited bending, and twisting) and was recommended for physical therapy. (PX3, p.8-17).

Petitioner began physical therapy on June 9, 2023 at OSF. (PX1, p.106-111). Petitioner underwent the same throughout June of 2023. (PX1, p.74-88, 94-105).

On June 12, 2023, Petitioner returned to see Dr. Love; he was prescribed medications and kept off work. (PX2, p.25, 64, 85).

On June 20, 2023, Petitioner returned to Dr. Templin. Dr. Templin recommended physical therapy, aquatic therapy, pain management for a trial of injections, and continued light duty restrictions. (PX3, p. 31-43). Petitioner continued therapy on July 5 and 6, 2023 with gradual progress. (PX1, p.60-66). On July 24, 2023, Dr. Love prescribed medications. (PX2, p. 24, 84).

Petitioner underwent physical therapy on July 26, 2023. (PX1, p. 56-58). On July 27, 2023, he began aquatic therapy and claimed the same difficulties as the June 9, 2023 initial physical therapy evaluation. (PX1, p. 3-55). Petitioner continued both therapies throughout July and August 2023 with minor improvement. (PX1).

On August 29, 2023, Petitioner returned to see Dr. Templin. (PX3, p.62-71). He reported therapy was making his symptoms worse, and that he had to stop working due to pain. He reported that Dr. Love had taken him off work and prescribed Cymbalta and Norco. Dr. Templin recommended injections, home exercises, and deferred to Dr. Love’s off work status. On September 20, 2023, Dr. Love prescribed medications. (PX2, p.21-22, 61, 79, 81).

On September 25, 2023, Petitioner returned to see NP Dubik at Modern Pain Consultants with complaints of low back pain radiating into his bilateral hips, groin region, and posterior aspect of the bilateral lower extremities. NP Dubik diagnosed low back pain and lumbar radiculopathy; recommended

bilateral TFESIs at L4-5 and L5-S1 with sedation; recommended a home exercise program; ordered a toxicology screen; and authorized Petitioner off work for an undetermined amount of time. (PX4, p.5-9).

On October 2, 2023, Dr. Kern Singh of Midwest Orthopaedics at Rush performed an independent medical examination. (RX5). Dr. Singh reviewed Petitioner's medical records, examined him, and took his history. Based on the same he diagnosed Petitioner with a lumbar muscular strain, status post L4-5 laminectomy defect, L4-5 left disk protrusion. He opined that Petitioner sustained soft tissue muscular strain of the lumbar spine which has resolved. The soft tissue strain was work related. He explained Petitioner's neurological exam was normal; that the MRI confirmed the L4-5 left disc protrusion was without significant stenosis and did not correlate to Petitioner's subjective complaints; that there was no L5 radiculopathy on examination; and that the L4-5 laminectomy defect itself was pre-existing and did not correlate with Petitioner's current complaints. Dr. Singh could not objectify Petitioner's subjective axial pain complaints, which were nonanatomic and did not correlate to the MRI. He opined that no further treatment or testing was necessary, noting that his treatment was excessive after four weeks of conservative treatment. He specifically opined that lumbar injections were not appropriate. Dr. Singh placed Petitioner at maximum medical improvement and opined that he could return to full duty work without restrictions. (RX5).

On October 10, 2023, Dr. Love prescribed medications and kept Petitioner off work. (PX2, p.21, 61, 79). On December 18, 2023, Petitioner saw Dr. Rehman at Modern Pain Consultants for his chronic low back pain. Petitioner requested that Dr. Love's off work status be extended. Dr. Rehman diagnosed post-laminectomy syndrome and lumbar radiculitis. He administered left lumbar 4-5 and 5-S1 TFESIs with sedation and ordered a toxicology screen. Petitioner was authorized off work for 4 weeks. (PX4, p.10-14).

On January 29, 2024, Petitioner returned to Dr. Rehman and complained of chronic low back pain; tingling in the left leg; and pain in his bilateral buttocks, groin, and testicular area. Petitioner stated his right-side pain was much improved and now only had pain on the left side. Petitioner was to proceed with a left lumbar 4-5 and lumbar 5-S1 transforaminal injection. Dr. Rehman diagnosed lumbar radiculitis and post-laminectomy syndrome. He administered left L4-5 and L5-S1 TESIs and authorized Petitioner off work for four weeks. (PX4, p.15-20).

On January 31, 2024, Dr. Singh performed an updated independent medical examination. (RX6). Petitioner reported low back pain that ranged between a 4-10 out of 10. Dr. Singh examined Petitioner and reviewed updated medical records. Dr. Singh opined Petitioner did not sustain an objectifiable work injury given the lack of a competent mechanism of injury and that Petitioner's subjective complaints were non-anatomic with no objective findings neurologically or radiographically. He diagnosed Petitioner status post L4-5 left laminectomy/disectomy and subjective low back pain. He opined Petitioner's current condition was not causally related to the work accident. Dr. Singh opined treatment received after his October 2, 2023 IME was not reasonable, necessary, or causally related to the work accident. He believed over-the-counter anti-inflammatories were reasonable and necessary to address Petitioner's subjective complaints. He opined no further treatment was reasonable, necessary, or causally related to the work accident. Petitioner was capable of returning to full duty work without restrictions. He confirmed his prior opinion that Petitioner had reached maximum medical improvement. (RX6).

Petitioner testified that he attempted to return to work on February 7, 2024, but his pain after three hours made him dysfunctional. (T.32-33). That same day, he presented to Dr. Love, who again prescribed medications and authorized Petitioner off work due to pain. (PX2, p.18, 38).

On February 26, 2024, Petitioner reported to NP Dubik that he had minimal to no relief from the January 29, 2024 injections. His list of subjective pain and disability was noted to be severe. The treatment plan was a home exercise program, follow up with a spine surgeon, and deference to Dr. Love regarding work status. (PX4, p.21-24). On February 28, 2024, Dr. Love prescribed medications and authorized Petitioner off work. (PX2, p.17, 34).

On March 15, 2024, Petitioner presented to PA Pittman at Hinsdale Orthopaedics. He complained of bilateral intermittent SI pain, worse at night. Petitioner reported he had no relief from the first injection and 20% to 25% relief from the second injection, but then his symptoms returned. PA Pittman recommended an updated MRI. If Petitioner could not live with his pain and disability, surgery would be considered. If Petitioner felt he could live with the pain and disability, then he would be sent for an FCE to determine his current capacities. PA Pittman deferred to Dr. Love's work status. (PX3, p.72-83).

The April 11, 2024 lumbar MRI images were compared the May 2, 2023 images. The radiologist's impression was stable lumbar spondylosis at L4-5 and L5-S1; prior left hemilaminectomy at L4-L5 with stable mild left lateral recess stenosis and mass effect of the traversing left L5 nerve root; and stable loss of disc space height at L5-S1 with mild degenerative endplate changes and left greater right foraminal narrowing. (PX1, p.9).

On April 23, 2024, Petitioner returned to Dr. Templin. Dr. Templin reviewed the April 11, 2024 lumbar MRI, which he interpreted as showing the L4-5 prior laminotomy defect on the left with some recurrent annular bulging that slightly displaced the left L5 nerve root. He further noted severe degenerative change with acute Modic endplate change surrounding the endplates of L4-5 and L5-S1 with significant loss of disc height at both levels. Dr. Templin opined Petitioner suffered from severe lumbar degenerative disc disease. He recommended a two-level fusion from L4-S1 via anterior approach with posterior instrumentation, and authorized Petitioner off work until surgery was approved, noting that he would work on obtaining surgical approval for Petitioner. (PX3, p.84-94).

Petitioner continued to treat with Dr. Love throughout June and July of 2024 who prescribed medications and kept Petitioner off of work. (PX2).

On July 26, 2024, Dr. Singh authored an Addendum Report. (RX7). He reviewed additional medical records and the April 11, 2024 MRI images. Dr. Singh opined Petitioner did not sustain an objectifiable work injury or a competent mechanism of injury, and that his subjective complaints of low back pain with the entire left lower extremity dysesthesias were nonanatomic and nonobjectifiable. He noted Petitioner had a normal neurological exam with positive Waddell findings. Petitioner's subjective complaints did not correlate to the objective imaging studies. His diagnosis was unchanged. He concluded that Petitioner's current condition was not causally related to the work accident. Dr. Singh opined that treatment received after his October 2, 2023 IME was not reasonable, necessary, or causally related to the work accident. As to the significance of the toxicology results, he noted Petitioner has had excessive narcotic use, which was not causally related to the work accident. He opined Petitioner was not need of any further medical treatment as it related to the work injury. Further, and expressly independent of

causation, Dr. Singh disagreed with the recommendation for an L4-S1 fusion. Dr. Singh opined that Petitioner had reached maximum medical improvement as of May 5, 2023 and was capable of returning to full duty work without restrictions. (RX7)

On August 26, 2024, Dr. Love prescribed medications and kept Petitioner off work. (PX2, p.58).

On September 4, 2024, Petitioner presented to Dr. Darwish, who assumed Petitioner's care as Dr. Templin had left the practice. Petitioner went over his work history and complained of low back pain and bilateral buttocks pain with radiation into the tailbone. Dr. Darwish reviewed his MRI. He opined given the temporal timing of the symptoms following the mechanism of injury, it was with reasonable medical certainty that Petitioner's current condition was causally related to the work-related injury. At this point, he recommended a L4-5, L5-S1 transforaminal lumbar interbody fusion with posterior instrumentation, use of allograft bone. Petitioner was to remain off work. (PX3, p.95-112).

Petitioner was last seen by Dr. Darwish on October 30, 2024. Petitioner was still experiencing sharp, shooting pain in his low back which radiated down both legs. Dr. Darwish recommended surgery again. Petitioner was to remain off work. (PX7, p.1-4).

CONCLUSIONS OF LAW

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

Decisions of an arbitrator shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e). Credibility is the quality of a witness which renders his evidence worthy of belief. The Arbitrator, whose province it is to evaluate witness credibility, evaluates the demeanor of the witness and any external inconsistencies with his/her testimony. Where a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. *McDonald v. Industrial Commission*, 39 Ill. 2d 396 (1968); *Swift v. Industrial Commission*, 52 Ill. 2d 490 (1972).

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

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds his testimony to be persuasive. The Arbitrator compared Petitioner's testimony with the totality of the evidence submitted and finds the witness reliable. While the Arbitrator did note some inconsistencies, the Arbitrator recognizes that there was no evidence to contradict his testimony.

With respect to issue (F), whether the Petitioner's present condition of ill-being is causally related to the alleged injury, the Arbitrator finds as follows:

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in her ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

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).

In the instant case, the Arbitrator finds Petitioner's current condition of ill-being is causally related to his work accident. The Arbitrator has reviewed the opinions of Dr. Templin, Dr. Darwish and Dr. Singh and places more weight on those of Drs. Templin and Darwish.

Petitioner was first seen by Dr. Templin on May 16, 2023. Respondent stipulated to accident in this matter. The Arbitrator notes that the history contained in Dr. Templin's records concerning the accident are consistent with Petitioner's testimony. Dr. Templin treated Petitioner with conservative care of physical therapy, followed by aquatic therapy, followed by two sets of bilateral transforaminal epidural steroid injections. The conservative treatment provided no lasting relief. Dr. Templin then recommended a two-level fusion. Dr. Templin noted throughout his records his opinion that Petitioner's condition of ill-being was causally related to his accident at work. He noted that the need for surgery was made necessary by the accident. In addition, the Arbitrator notes that Dr. Darwish took over Petitioner's care when Dr. Templin left the practice. Dr. Darwish examined Petitioner and also concluded Petitioner underwent conservative treatment without any relief of his symptoms and was now a surgical candidate due to his

accident at work. The Arbitrator also notes that the history contained in Dr. Darwish's records is fully consistent with Petitioner's testimony concerning the accident. Dr. Darwish opined that Petitioner's condition of ill-being was causally related to that accident.

In contrast, in reviewing Dr. Singh's opinion, he noted Petitioner did not sustain an objectifiable work injury. The Arbitrator, however, notes Petitioner sustained an acute and proceeded to the Emergency Room that day. Since that day, Petitioner has not returned to his "wax and wane" pain as he was experiencing prior to the injury. In addition, the Arbitrator notes the medical records submitted into evidence show Petitioner last treated in August 2022, approximately 7 months prior to the injury. The Arbitrator finds that this injury increased Petitioner's pain and the need for medical care such as surgery. In addition, Petitioner testified that Dr. Singh spent only a few minutes with him and did not ask him about his work activities or his job duties. The Arbitrator notes that the history of accident contained in Dr. Singh's records is consistent with Petitioner's testimony as well.

The Arbitrator finds Dr. Singh's opinions are inconsistent with the opinions of Dr. Templin, and Dr. Darwish, with respect to Petitioner's symptoms, need for treatment, treatment recommendations and inability to work. The Arbitrator finds Dr. Singh's opinions to be unpersuasive.

The Arbitrator notes 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. Based on the chain of events history in the records of Dr. Love, Dr. Templin, and Dr. Darwish, and the opinions of Dr. Templin and Dr. Darwish, the April 7, 2023 work-related accident was a causative factor in Petitioner's condition of ill-being.

Based upon the aforementioned evidence and after careful consideration, the Arbitrator finds Petitioner's current condition of ill-being as it pertains to his lumbar spine condition is related to his alleged injury on April 7, 2023.

The Arbitrator finds with respect to Issue (J) whether the medical services that were provided to the Petitioner were reasonable and necessary:

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

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

Given the Arbitrator's finding of causation between Petitioner's April 7, 2023 work accident and his condition of ill-being regarding his low back, Respondent is liable for reasonable and necessary medical treatment of the causally related conditions.

Petitioner admitted medical bills into evidence. (PX5). Petitioner claims \$32,579.17 in outstanding bills to four providers. (PX5). Respondent paid a total of \$12,694.24 in medical expenses incurred to various providers. (RX1).

Petitioner is requesting \$672.00 in unpaid medical from Central Illinois Radiological Associates for two dates of services. For the April 10, 2023 dates of service, there is an amount of \$161.00 that is being requested and for the April 11, 2024 date of service there is an amount of \$511.00. Respondent did make a payment on April 10, 2023 according to their medical bill exhibit. The Arbitrator awards these bills as reasonable, necessary, and causally related. If Respondent has paid the April 10, 2023 medical bill, Respondent shall receive credit for amounts paid.

In regards to the Illinois Bone & Joint/Hinsdale Orthopaedics unpaid medical, the Arbitrator finds that the medical bills to be reasonable, necessary, and causally related. As such, Respondent is liable for these medical bills.

As to Modern Pain Consultants, the alleged unpaid bills submitted for December 18, 2023; January 29, 2024; and February 26, 2024. (PX5). Respondent did issue some payments (RX1). The Arbitrator awards these bills as reasonable, necessary, and causally related. If Respondent has paid these bills per the fee schedule, there will be no award for balance billing. Petitioner is not entitled to the September 25, 2023 bill for the toxicology test as the results are not within the subpoenaed medical records. The office bill is awarded. (PX4).

As to Ottawa Osteopathic Physicians/Dr. Love's bills, Respondent is not liable for January 2024 treatment related to Petitioner's upper back mole. Having reviewed the unpaid medical bills and the medical records submitted, the Arbitrator finds the remaining medical bills to be reasonable, necessary, and casually connected. Respondent shall receive credit for amounts paid.

As outlined above, the Arbitrator orders Respondent to pay Petitioner directly for the remaining outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for amounts paid.

With respect to Issue (L), what temporary benefits and temporary partial disability benefits are in dispute, the Arbitrator finds as follows:

It is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, i.e., whether the claimant has reached maximum medical improvement. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill. 2d 132, (2010).

Petitioner is claiming TTD benefits beginning from April 8, 2023 through April 16, 2023; from August 24, 2023 through October 9, 2023; and from October 26, 2023 through October 31, 2024, i.e., 60 6/7 weeks of TTD benefits. The Arbitrator finds Petitioner has not recovered from his injuries and has not reached Maximum Medical Improvement. Petitioner testified he was off of work during these periods. He has not worked or done any type of work. He also has not had any new accidents. In addition, during this period, Petitioner remained under medical care and was authorized off by Dr. Love, Dr. Templin, and Dr. Darwish.

As such, the Arbitrator finds Petitioner was off work during this period. Based on the same TTD benefits are awarded for this period. Respondent shall receive credit for amounts paid.

With respect to Issue (K) whether Petitioner is entitled to any prospective medical care, the Arbitrator finds the 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, it is found Petitioner's condition is causally related to his work accident and has not stabilized or otherwise reached MMI. Petitioner seeks prospective care in the form of a two-level fusion with instrumentation in order to cure or relieve him from the effects of his injury.

Given the Arbitrator's finding on causation, the Arbitrator finds Petitioner is entitled to prospective medical care as recommended by his treating physician, Drs. Templin and Darwish. For the reasons stated above, Respondent shall authorize and pay for this and such other reasonable medical treatment pursuant to the statutory fee schedule.

With respect to Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator finds as follows:

The Worker's Compensation Act allows for discretionary penalties under Section 19(k) where there has been a delay in compensation that is unreasonable, frivolous, or vexatious. Section 16 allows for discretionary attorney fees for any such delay. Section 19(l) allows for discretionary penalties in the nature of a late fee where there has been a lack of good and just cause for a delay in compensation.

Penalties may not be imposed if nonpayment was based on a reasonable and good faith challenge to liability. *Swift Co. v. Industrial Com*, 150 Ill. App. 3d 216, 222 (Ill. App. Ct. 1986). When an employer relies upon a reasonable medical opinion or where there are conflicting medical opinions, penalties ordinarily are not imposed. *Matlock v Industrial Comm'n*, 321 Ill. App. 3d 167, 173 (2001).

There is no evidence that Respondent's conduct has been unreasonable, frivolous, or vexatious. The evidence shows good and just cause for a denial of benefits. Respondent reasonably and in good faith relied on the credible opinions of Section 12 examiner Dr. Singh. Respondent obtained periodic updated opinions from Dr. Singh as to Petitioner's medical status and work capacity. While the Arbitrator does not agree with Respondent's argument, it is the Arbitrator's view that Respondent's position is not objectively unreasonable or vexatious. The denial of this matter based on accident does not rise to the level of being vexatious and unreasonable.

Neither penalties nor fees should be imposed on Respondent. Respondent reasonably and in good faith relied on the opinions of Dr. Singh in its denial of benefits. Petitioner's claims that he could not work, and his continued treatment for subjective and unobjectifiable complaints, does not give rise to penalties or fees. Reasonable disputes exist as to Petitioner's condition, causation for the same, medical treatment, and work capacity that ultimately led to trial and remain in dispute.

For the above reasons, penalties and/or fees under Sections 16, 19(k), and 19(l) are not appropriate in this matter. Penalties and fees are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC029390
Case Name	Janice Hindman v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0394
Number of Pages of Decision	18
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner

DATE FILED: 9/18/2025

/s/Stephen Mathis, Commissioner

Signature

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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 Accident	☐ Second Injury Fund (§8(e)(18))
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Janice Hindman,

Petitioner,

vs.

No. 23 WC 29390

State of Illinois/Pinckneyville Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by the parties herein and proper notice given, the Commission, after considering the issues of accident, causal connection, medical expenses, prospective medical care and permanent disability, and being advised of the facts and law, reverses the Decision of the Arbitrator and denies Petitioner's claim for the reasons stated below.

Petitioner's application for adjustment of claim alleges that on September 12, 2023, Petitioner injured her right foot when she fell. The Arbitrator found the claim compensable. We disagree.

Petitioner, who was 67 years old at the time of the arbitration hearing, testified that she worked for Respondent as an office coordinator. Petitioner described the accident on September 12, 2023, as follows:

"I was getting ready to leave and walking from the back of where *** my office was. There was some guards and majors behind me, and my feet kept on feeling like it was sticking to the floor, and they were releasing.

But I got up by the copy room and the major's office, and all of a sudden whenever I stepped, my foot didn't release, and I went flying to the ground ***. And officers, the majors, and the guards, and everybody that was behind me tried picking me up and asking me if I was okay ***. And I told them that my foot stuck to the floor because of the soap that must have been in the water that they had been mopping the floor with."

Asked why the accident report did not mention the soap, Petitioner responded: "Because I thought with all the guards and the majors and everybody that was behind me, *** I didn't need to put it in."

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When Petitioner fell, she broke her right big toe. Ultimately, Petitioner came under the care of Dr. Matthew Bradley. She underwent conservative treatment and was released to return to work. Petitioner has returned to work full duty.

Major Matthew Nichols, Petitioner's witness, testified that he had witnessed Petitioner's fall and completed a report. Maj. Nichols disagreed with Petitioner's description of the condition of the floor, stating: "I do not recall the floor being sticky, no. I mean, yes, we do mop, sweep and mop the floor several times throughout the day." Maj. Nichols explained that he saw the condition of the floor when he got down on his knees to help Petitioner. Maj. Nichols "did not feel or sense any stickiness on the floor whatsoever." Maj. Nichols was unequivocal: "[T]he floor was not sticky." Further, there were no defects on the floor. Maj. Nichols did not know what caused Petitioner to stumble and fall.

Cheryl Carlson, a confidential assistant to the warden, testified that the accident was not originally reported to her. Rather,

"our work comp coordinator had called and asked, because [Petitioner] had said that there was something sticky on the floor.

So Susan Miller up in Springfield, compliance and control, had sent our work comp coordinator an e-mail asking what was sticky on the floor.

So then that's when I got involved with it. So I called to [the location of the accident] to find out what happened, and was there something sticky on the floor, and then that's how I became involved with it.

And so then [Petitioner] had called me that day, and we were discussing it on the phone and, basically, she just told me she had tripped and fell."

Ms. Carlson investigated further and found no reports of anything sticky on the floor. Petitioner's accident report did not mention anything sticky on the floor.

Accident reports completed by Petitioner state that her "shoes was sticking;" "shoe felt like it grab the floor and didn't let go," and she fell; "[s]hoe seem to stick to floor and made me fall;" and "[m]y shoe felt like it stuck to floor and it thru (sic) me and I went flying to the ground."

Injury paperwork completed by Maj. Nichols states: "I witnessed the employee stumble and fall forward while walking;" and "[the employee] [s]tumbled and fell forward onto the ground."

An incident report completed by Ms. Carlson on September 18, 2023, states: "On the above date ***, [Petitioner] called to PNKCC to speak about her work comp claim. She had stated in her Work Comp Claim that someone had told her that there was something sticky on the ground when she fell. She claims that this is what made her fall. I asked her what staff stated that and was it before or after she fell in the hallway? She could not recall who told her but said it was after she had fallen. Later in our conversation, she told me that she tripped and fell."

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Medical records from Marshall Browning Hospital and Clinics show that Petitioner was first seen on September 16, 2023. The staff noted the following description of the accident: “[The patient] reports she was at work when her foot kinda stuck to the floor causing her to fall forward and down.” The medical records further show that at the time, Petitioner was suffering from pyoderma gangrenosa and had full-thickness necrotic ulcers with copious drainage on her legs.

Medical records from Dr. Angela Freehill at the Orthopaedic Center of Southern Illinois show that on October 20, 2023, Petitioner attributed her fall to a sticky floor.

Medical records from Dr. Bradley at Metro-East Orthopedics show that Petitioner began treating with Dr. Bradley on October 30, 2023. She attributed her fall to her foot sticking to the floor, which “had recently been scrubbed and the soap left a sticky residue.” Dr. Bradley further noted: “[The patient] suffers from severe lupus and pyoderma. She is on chronic prednisone and has very large, full thickness wounds over her medial and lateral malleoli unrelated to her fall. She is currently being treated by wound care for this.” Dr. Bradley diagnosed a severe intra-articular fracture of the proximal phalanx of the right great toe, as well as significant degenerative disease throughout the foot. Dr. Bradley did not think surgery could safely be performed, “given her multiple full thickness open wounds and her being on chronic prednisone.” Instead, Dr. Bradley fitted Petitioner with a special shoe. On February 1, 2024, Dr. Bradley declared Petitioner at maximum medical improvement, released her to return to work full duty, and discharged her from care.

The Commission notes that Petitioner did not initially report the floor was sticky. Rather, she reported her shoe was sticky. When Respondent started investigating the claim, Petitioner reported that someone told her there was something sticky on the floor. When Petitioner saw Dr. Bradley more than a month later, she stated that the floor “had recently been scrubbed and the soap left a sticky residue.” Maj. Nichols testified that he saw the condition of the floor when he got down on his knees to help Petitioner. The floor was not sticky. The medical records show that Petitioner was suffering from very large, full-thickness oozing wounds on her legs and ankles due to preexisting severe lupus and pyoderma. The condition was so severe that Dr. Bradley decided against operating on Petitioner’s foot. The Commission finds that Petitioner failed to meet her burden of proving a nexus between her fall and her employment with Respondent. The weight of the evidence points to personal risks. *Cf. McAllister v. Workers’ Compensation Comm’n*, 2020 IL 124848.

All other issues are moot.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 24, 2024, is hereby reversed and Petitioner’s claim is denied.

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Pursuant to §19(f)(1) of the Act, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

September 18, 2025

SJM/sk

o-9/9/2025

44

/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	23WC029390
Case Name	Janice Hindman v. State of Illinois - Pinckneyville Correctional Center
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner

DATE FILED: 6/24/2024

/s/ Linda Cantrell, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 18, 2024 5.15%

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



June 24, 2024

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Janice Hindman

Employee/Petitioner

v.

State of Illinois/Pinckneyville Correctional Center

Employer/Respondent

Case # **23** WC **029390**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Linda J. Cantrell**, Arbitrator of the Commission, in the city of **Herrin**, on **May 3, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **9/12/23**, 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 **\$33,449.00**; the average weekly wage was **\$1,114.97**.

On the date of accident, Petitioner was **67** years of age, *single* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$All Paid** for TTD, **\$N/A** for TPD, **\$N/A** for maintenance, and **\$N/A** for other benefits, for a total credit of **\$All Paid**, pursuant to the stipulation of the parties.

Respondent is entitled to a credit of **\$TBD and any and all paid** under Section 8(j) of the Act, pursuant to the stipulation of the parties.

ORDER

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 or PPO agreement, whichever is less, as provided in Sections 8(a) and 8.2 of the Act and pursuant to the stipulation of the parties. Respondent shall receive a credit for all medical expenses previously paid and all medical expenses paid through its group medical plan under Section 8(j) of the Act, pursuant to the stipulation of the parties. Respondent shall hold Petitioner harmless from any and all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

Respondent shall pay Petitioner permanent partial disability benefits of **\$668.98/week** for **25.05** weeks, because the injuries sustained caused **15%** loss of use of the right foot, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 2/1/24 through 5/3/24, 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.



Arbitrator Linda J. Cantrell

June 24, 2024

STATE OF ILLINOIS)
) SS
 COUNTY OF WILLIAMSON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

JANICE HINDMAN,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case No.: 23-WC-029390
	)	
STATE OF ILLINOIS/PINCKNEYVILLE	)	
CORRECTIONAL CENTER,	)	
	)	
Employer/Respondent.	)	

FINDINGS OF FACT

This claim came before Arbitrator Linda J. Cantrell for trial in Herrin on May 3, 2024 on all issues. On 11/3/23, Petitioner filed an Application for Adjustment of Claim alleging injuries to her right foot as a result of falling on 9/12/23. (AX2) The parties stipulated that Respondent is entitled to a credit for any and all medical bills previously paid and a credit for any and all medical bills paid through its group medical plan, pursuant to Section 8(j) of the Act. The parties stipulated that all medical bills awarded shall be paid directly to the medical providers pursuant to the Illinois medical fee schedule or PPO agreement, whichever is less. The parties further stipulated that all temporary total disability benefits have been paid and Respondent shall receive credit for any and all TTD benefits paid.

The issues in dispute are accident, causal connection, medical bills, and the nature and extent of Petitioner's injuries.

TESTIMONY

Petitioner was 67 years old, single, with no dependent children at the time of the alleged accident. Petitioner has been employed by the Illinois Department of Corrections since 2013 and began working for Respondent in 2018 as an office coordinator. Petitioner testified that on 9/12/23 she was walking away from her office and her feet kept sticking to the floor. She testified that guards and majors were walking behind her. When she reached the copy room and majors office her foot did not release from the floor, and she went flying to the ground. Petitioner testified that the guards and majors that were walking behind her tried to pick her up. She told them that her foot stuck to the floor from the soap that was used in the water when the floors were mopped. When asked why she did not mention the soap in her accident report she stated, "Because I thought with all the guards and all majors and everybody that was behind me, that they – I didn't need to put it in."

Petitioner testified that she broke her right great toe. Dr. Bradley placed her right foot in a boot and prescribed work restrictions that Respondent did not accommodate. Petitioner received TTD benefits while she was off work. She testified that Dr. Bradley instructed her to wear a special shoe when she returned to work. Petitioner was not wearing the special shoe at arbitration because she was told to “dress nice”. She testified that during arbitration she slipped her regular shoe off and on because it was too tight around her toe.

Petitioner still has pain and swelling in her toe that is aggravated with weather changes. She takes Aleve and Tylenol 4 at bedtime if her symptoms keep her awake at night. Petitioner testified that she walks slow and has an altered gait since her injury. She is not currently receiving treatment for her right big toe.

On cross-examination, Petitioner testified that Lieutenant Nichols was present when she fell. She could not recall the names of the other officers that were walking behind her because she was new to the facility. Petitioner returned to her full duty job for Respondent. She testified that Dr. Bradley told her to wear a boot at work if her regular shoe bothered her toe. Petitioner testified that she had no reason to doubt any information contained in her medical records.

Petitioner called Major Matthew Nichols to testify. Major Nichols is employed by IDOC and works at Centralia Correctional Center as a shift supervisor. Major Nichols testified that he witnessed Petitioner’s accident and completed a report. Major Nichols reviewed Petitioner’s accident report at arbitration (PX7), and he agreed that Petitioner stated in the report that her foot stuck to the floor. He testified that he did not recall the floor being sticky on the day of Petitioner’s accident. He testified that the floors are swept and mopped several times throughout the day. Major Nichols testified that he did not know what caused Petitioner to fall on 9/12/23.

On cross-examination, Major Nichols agreed there were people around when Petitioner fell but he could not “name names”. He could not remember seeing anybody else actually witness Petitioner fall. He testified that he bent down on his knee to assist Petitioner off the floor, and he did not feel or sense any stickiness on the floor whatsoever. In his opinion the floor was not sticky. He testified that they take very good care of the floors and it did not have any defects. Major Nichols testified that he did not receive any reports that the floors were sticky the day of Petitioner’s fall. When asked if he was working at the Pinckneyville Correctional Center that day he stated, “No, I was at the Murphysboro facility that day.” On re-direct examination, Major Nichols clarified that he was working at the Murphysboro Life Skills Re-Entry Center on 9/12/23 which is where Petitioner’s accident occurred.

Respondent called Cheryl Carlson to testify. Ms. Carlson has worked for IDOC at the Pinckneyville Correctional Center for five years. She is an Administrative Assistant II and a confidential assistant to the warden. Ms. Carlson testified that she was aware of Petitioner’s accident, but it was not reported to her. Ms. Carlson testified that the workers’ compensation coordinator called her because Petitioner alleged the floor was sticky. She stated that the compliance and control officer Susan Miller sent the work comp coordinator an email asking what was sticky on the floor. Ms. Carlson then got involved and contacted Murphysboro to find out if the floor was sticky when Petitioner fell. Ms. Carlson testified that Petitioner called her on the phone that day and Petitioner told her that she just tripped and fell. Ms. Carlson testified that

she contacted the superintendent at the facility and there were no reports of the floor being sticky.

MEDICAL HISTORY/ACCIDENT REPORTS

On 9/15/23, Petitioner completed an IDOC Incident Report. (RX4) She reported, “was walking down hallway to go home. Turned corner went past bathrooms, copy room on right side – I was walking on left side. My shoe felt like it stuck to floor and it thru me and I went flying to the ground. Hurt my right foot – big toe. Looks like broke all bruised top, bottom, and side. Left chest upper region hurts can’t touch or lay on it. Hurts to breath. Left thumb underside small bruise. Body – back hurts like it’s been out of shape.” Major Nichols accepted the Incident Report on 9/16/23.

On 9/15/23, Petitioner completed a Workers’ Compensation Employee’s Notice of Injury for Tristar. (PX7) She reported that on 9/12/23 she, “was leaving for the day. Shoe felt like it grab the floor and didn’t let go. When it did I fell to floor. Hurt shoulder thumb right foot.” Petitioner reported the injury occurred when she was walking down the hallway to exit, and her shoes were sticking. She stated her right big toe was bruised on top, bottom, and side and her left chest area hurt to touch with no bruising noted. Petitioner reported there were witnesses to her injury but did not provide any names. She noted that Matthew Nichols was her supervisor.

On 9/16/23, Major Matthew Nichols completed a Workers’ Compensation Witness Report for Tristar. (PX7, p. 2) Major Nichols stated he witnessed Petitioner’s fall that occurred on 9/12/23 at 3:58 p.m. He reported he witnessed Petitioner stumble and fall forward while walking in the hallway in front of the Majors Office.

On 9/16/23, Major Nichols completed a second Workers’ Compensation Witness Report for Gallagher Bassett. (RX3) Major Nichols again reported he witnessed Petitioner walking in the hallway in front of the Majors Office when she stumbled and fell forward onto the ground.

On 9/16/23, Major Nichols completed a Supervisor’s Report of Injury or Illness for Gallagher Bassett. (RX2) Major Nichols noted that Petitioner had worked as an Office Administrator III for two weeks when the accident occurred. She previously worked as an Office Coordinator for four years. Major Nichols reported that he witnessed Petitioner fall on 9/12/23 at 3:58 p.m. He reported that Petitioner stumbled and fell forward to the ground resulting in injuries to her right foot and big toe. He reported there were no unsafe acts or conditions that contributed to Petitioner’s fall. Major Nichols noted that Petitioner’s injury was reported to the Superintendent Angie Isaacs.

On 9/18/23, Cheryl Carlson completed an “Incident Report”. (RX5) Ms. Carlson reported that on 9/18/23 at 11:00 a.m. Petitioner called Pinckneyville C.C. to speak about her workers’ compensation claim. Ms. Carlson reported that Petitioner, “stated in her Work Comp Claim that someone told her that there was something sticky on the ground when she fell. She claims that is what made her fall. M. Carlson asked Petitioner what staff stated there was something sticky on the floor and was it before or after she fell in the hallway? Petitioner could not recall who told

her, but it was after she had fallen. Ms. Carlson reported that later in their conversation, Petitioner told me that she tripped and fell.

On 9/20/23, Petitioner completed a second Workers' Compensation Employee's Notice of Injury for Gallagher Bassett. (RX1) Petitioner reported that on 9/12/23 she was walking down the hall to leave for the day and her shoe seemed to stick to the floor causing her to fall. She fell across from the copy room and the Majors office. She stated that she noticed her shoe had been sticking to the floor and her shoe caught on the floor and she fell. She injured her right big toe, left upper chest, and the left inside of her thumb was bruised. Petitioner stated that Major Matthew Nichols witnessed her fall. She stated that the accident was reported to her supervisor Angie Isaacs/Nelson the day it occurred.

On 9/16/23, Petitioner presented to Marshall Browning Clinic (MBC) with pain in her right great toe and left chest wall. (PX3) LNP Sophie Hooker noted Petitioner reported she was at work when her foot kinda stuck to the floor causing her to fall forward and down. She fell onto her outstretched left arm. LNP Hooker noted Petitioner reported no reason for the fall, that she just tripped over the floor. Physical examination revealed her right great toe was black and purple in color, swollen, and painful to touch. Petitioner was wearing flip flops as she could not fit her foot into a shoe. LPN Hooker noted Petitioner's entire right foot was swollen. Petitioner was assessed with a fracture of the proximal phalanx of the right toe. X-rays of Petitioner's right foot were ordered, and she was instructed to ice and elevate her foot and use NSAIDs. LPN Hooker advised it may take time for the muscle soreness to improve in the left side of her chest. Petitioner was placed on work restrictions pending x-rays.

On 9/17/23, LPN Hooker called Petitioner to advise the x-rays revealed a comminuted intra-articular fracture through the base of the first proximal phalanx without significant angulation. Petitioner was referred to an orthopedic specialist.

On 9/21/23, Petitioner returned to MBC and reported she was currently working and wearing a post-operative shoe on her right foot. Petitioner reported she had additional treatment for unrelated ulcers in her bilateral legs with a diagnosis of pyoderma gangrenosa. Petitioner presented with large dressing on her bilateral legs with yellow copious pus like drainage. Petitioner rated her right foot pain 7/10. She was diagnosed with a closed displaced fracture of the right great toe. A CT scan of Petitioner's right foot was performed on 9/29/23 that revealed a comminuted fracture of the base of the first toe, tibial sesamoid fracture, and multifocal degenerative changes. Petitioner was instructed to continue wearing the shoe.

On 10/4/23, Petitioner returned to MBC for treatment of her bilateral leg ulcers and right great toe fracture. Dr. Dickinson noted the CT scan showed mild edema in the right hallux and he believed Petitioner had delayed healing of the fracture. He indicated that Petitioner may require surgery and referred her to an orthopedic specialist.

On 10/9/23 and 10/19/23, Petitioner returned to MBC with moderate to severe pain in her right foot and toe. Examination showed mild to moderate edema in the right hallux. It was noted that the referral to an orthopedic specialist was pending.

On 10/20/23, Petitioner presented to Dr. Angela Freehill for evaluation. (PX4) Petitioner reported that on 9/12/23 she was walking out of work and the floor was sticky due to something that had not been washed well off the floor. Her right foot stuck to the floor causing her to fall. She hyperflexed her right great toe and felt immediate pain. Petitioner reported there were many people who were walking behind her that helped her to her feet. Petitioner reported she could not get in to see urgent care until four days after the injury due to a paperwork problem with work comp. Petitioner reported she was unhappy with the cast shoe because it was too big, and she had difficulty walking in it.

Dr. Freehill noted Petitioner was working with restrictions. Petitioner rated her pain 8/10 with sharp, throbbing, and aching pain. Dr. Freehill noted Petitioner had swelling, bruising, popping, grinding, locking, and giving way. Standing, walking, and stairs aggravated her symptoms. Physical examination showed swelling and bruising at the MTP joint of the right great toe and tenderness at the base of the proximal phalanx. X-rays were taken that showed further displacement of the great toe fractures with lateral displacement of the primary fracture fragment of the proximal phalanx and significant comminution of the medial and lateral condyles of the base of the proximal phalanx. There was also collapse of the fracture at the MTP joint. Dr. Freehill recommended that Petitioner wear a cam walker boot and weight bear as tolerated in the boot. Dr. Freehill believed Petitioner may require surgery and referred her to another specialist for further evaluation. She continued Petitioner's light duty restrictions, and prescribed Norco.

On 10/30/23, Petitioner presented to Dr. Matthew Bradley for evaluation. (PX5) Petitioner reported she was walking out of work when her foot stuck to the floor. She stated that the floor had recently been scrubbed and the soap left a sticky residue that caused her to fall. Physical examination revealed an antalgic gait with limping, swelling of the right ankle and great toe, tenderness over the MTP, and decreased range of motion. X-rays were taken that revealed a significant intraarticular fracture with displacement of the proximal phalanx of the great toe, intertarsal degenerative disease, calcaneal heel spur, and Achilles enthesophyte. Dr. Bradley noted that ideally, Petitioner's fracture would be treated operatively; however, given her multiple full thickness open wounds on her bilateral legs and her being on chronic Prednisone, he did not believe surgery could safely and successfully be performed. He recommended that Petitioner wear a special shoe that would allow for weight bearing through her heel but not into her toe. Petitioner was fitted with the shoe and ordered to follow up in four weeks. Dr. Bradley noted that he would consider surgery if Petitioner's unrelated wounds healed to the point surgery could be performed safely. He believed that the great toe fracture was a direct result of the 9/12/23 accident. He placed Petitioner on restrictions of using the special shoe at all times and ordered an MRI.

On 12/11/23, Petitioner returned to Dr. Bradley and reported that the heel bearing shoe was helping. She reported pain with weight bearing. Dr. Bradley noted the MRI showed significant edema about the first MTP with subacute fracture. He did not agree with radiologist Dr. Ruyle's interpretation as he believed Petitioner had a subacute fracture which was consistent with her medical records and treatment up to that time. He found healing of the edema and fracture. Dr. Bradley recommended that Petitioner continue wearing the heel bearing shoe and prescribed Lidoderm gel for pain.

On 2/1/24, Dr. Bradley noted Petitioner was doing well. She continued to wear the shoe and was able to ambulate without pain or complications. X-rays showed healing of the proximal phalanx fracture without any significant displacement. He noted Petitioner had some pain with motion of the joint, likely secondary to some underlying degenerative disease. He opined that Petitioner could wean off the elevated heel shoe to a regular shoe as tolerated. Dr. Bradley released Petitioner to full duty work without restrictions and placed her at MMI.

CONCLUSIONS OF LAW

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

Petitioner bears the burden of proving every element of her case by a preponderance of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). To meet her burden of proving her injury was the result of a compensable accident, Petitioner must show by a preponderance of the evidence that she sustained a disabling injury which arose out of and in the course of her employment. *Sisbro*, 207 Ill. 2d at 203. The phrase “in the course of employment” refers to the time, place, and circumstances surrounding the injury. *Id.* It is undisputed that Petitioner’s injuries occurred in the course of her employment.

To satisfy the “arising out of” prong of the analysis, Petitioner must show that her injury “had its origin in some 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.” *McAllister v. Ill. Workers’ Comp. Comm’n*, 2020 IL 124848, ¶36. 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.* at ¶38 (citations omitted).

Courts have consistently reasoned that a neutral risk analysis is unnecessary when the injury is the direct result of a hazardous condition on the employer's premises. Instead, courts have deemed injuries resulting from a hazardous condition or defect on the employer's premises to be “risks distinctly associated with the employment.” *See, Dukich*, 2017 IL App (2d) 160351WC at ¶40. Quintessential examples of risks distinctly associated with the employment include “tripping on a defect at the employer’s premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling.” *Id.* at ¶39 (citations omitted).

After considering the credible evidence, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 9/12/23. The Arbitrator finds that Petitioner’s injury was due to the presence of a hazardous condition on Respondent’s premises.

Petitioner credibly testified that she felt her shoes sticking to the floor as she walked down the hallway to leave for the day. She testified that her foot stuck to the floor because of the soap used to mop the floors. As she passed the copy room and Majors office her foot stuck on the left side of the hallway, causing her to fall to the ground. Petitioner testified that guards and

majors were walking behind her and helped her to her feet. She testified that she did not know the names of the officers as she was new to the facility. Major Nichols noted on the Supervisor's Report of Illness or Injury that Petitioner had worked as an Office Administrator III for two weeks when the accident occurred. Major Nichols testified that there were people around when Petitioner fell but he could not "name names". There is no evidence that any employee completed a witness report except Major Nichols.

Petitioner completed two reports on 9/15/23, namely an Incident Report and a Notice of Injury. She reported she was walking on the left side of the hallway when her shoe felt like it stuck to the floor, and she went flying forward. Petitioner reported there were witnesses to her injury, but she did not provide any names. Petitioner completed a second Notice of Injury for Gallagher Bassett eight days after the accident. Her report was consistent with the first two completed on 9/15/23 and she noted that Major Nichols witnessed her fall.

Major Nichols completed three reports four days after the accident, including a witness report for Tristar, a witness report for Gallagher Bassett, and a Supervisor's Report of Illness or Injury. Major Nichols witnessed Petitioner "stumble and fall forward while walking in the hallway". He reported there were no unsafe acts or conditions that contributed to Petitioner's accident, and that the floor was not sticky when Petitioner fell.

Respondent's Administrative Assistant Cheryl Carlson testified that the workers' compensation coordinator called her because Petitioner alleged the floor was sticky. Ms. Carlson then spoke to Petitioner on 9/18/23 and Petitioner told her the floor was sticky which caused her to fall. Petitioner further reported that she was told the floor was sticky after she fell. Ms. Carlson asked Petitioner what staff told her the floor was sticky and Petitioner could not recall. Petitioner testified that she did not mention the soap in her accident report, "Because I thought with all the guards and all majors and everybody that was behind me, that they – I didn't need to put it in." Ms. Carlson testified that she contacted Respondent's facility and was told there were no reports of the floors being sticky.

On 9/16/23, Petitioner reported to LNP Sophie Hooker at Marshall Browning Clinic that she was at work on 9/12/23 when her foot kinda stuck to the floor causing her to fall forward and down. LNP Hooker further noted that Petitioner reported no reason for the fall, that she just tripped over the floor. The Arbitrator does not find LNP Hooker's additional comments regarding causation persuasive as Petitioner specifically reported the reason that she fell is because her foot stuck to the floor, which is consistent with Petitioner's written reports completed on 9/15/23 and 9/20/23.

Petitioner continued to treat at MBC and was initially examined by Dr. Angela Freehill on 10/20/23. She reported that on 9/12/23 she was walking out of work and the floor was sticky due to something that had not been washed well off the floor. Her right foot stuck to the floor causing her to fall. She reported there were many people walking behind her that helped her to her feet. On 10/30/23, Petitioner reported to Dr. Matthew Bradley that she was walking out of work when her foot stuck the floor. She stated that the floor had recently been scrubbed and the soap left a sticky residue that caused her to fall.

The evidence shows a limited investigation into Petitioner's accident, which included Administrative Assistant Cheryl Carlson's testimony that she contacted Respondent's facility and was told there were no reports of the floors being sticky. Major Nichols testified that the floor did not appear sticky when he knelt down to assist Petitioner and he did not know what caused her to fall. It was undisputed that several employees were walking behind Petitioner; however, there were no witness reports admitted into evidence or testimony from those employees at arbitration. There were no written documents or testimony from the workers' compensation coordinator or the compliance and control officer Susan Miller whom Ms. Carlson testified were told that the floor was sticky on 9/12/23. Major Nichols noted in his written report that Petitioner's injury was reported to the Superintendent Angie Isaacs. There were no written reports admitted into evidence authored by Ms. Isaacs and she did not testify at arbitration.

Based on the evidence as a whole, the Arbitrator finds that Petitioner sustained accidental injuries that arose out of and in the course of her employment with Respondent on 9/12/23.

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 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 and 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, 197 Ill.Dec. 502, 631 N.E.2d 724 (1994); *International Harvester v. Indus. Comm'n*, 93 Ill.2d 59, 666 Ill.Dec.347, 442 N.E.2d 908 (1982).

Petitioner consistently reported in her multiple written reports and to all of her treating physicians that her foot stuck to the floor causing her to fall to the ground. There is no dispute that Petitioner sustained an acute injury to her right foot as a result of the accident. Dr. Bradley examined Petitioner on 10/30/23 and diagnosed an intraarticular fracture with displacement of the proximal phalanx of the right great toe. He opined that Petitioner's injury was a direct result of the 9/12/23 accident. Petitioner was not examined pursuant to Section 12 of the Act.

Based on the entirety of the evidence, the Arbitrator finds that Petitioner's current condition of ill-being is causally connected to the work accident of 9/12/23.

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

Based on the above findings as to accident and causal connection, and the absence of any evidence that Petitioner's treatment and/or medical expenses were unreasonable or unnecessary, 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 or PPO agreement, whichever is less, as provided in Sections 8(a) and 8.2 of the Act and pursuant to the stipulation of the parties. Respondent shall receive a credit for all medical expenses previously paid and a credit for any and all medical expenses paid through its group medical plan under Section 8(j) of

the Act, pursuant to the stipulation of the parties. Respondent shall hold Petitioner harmless from any and all claims or liabilities made by the group medical plan to the extent of such 8(j) credit.

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(v).

- (i) **Level of Impairment:** Neither party submitted an AMA impairment rating. Therefore, the Arbitrator places no weight on this factor.
- (ii) **Occupation:** Petitioner was released at MMI without restrictions on 2/1/24. Dr. Bradley instructed Petitioner to wean off the elevated heel shoe to a regular shoe as tolerated. Petitioner returned to her pre-accident position with Respondent. She testified that she continues to wear the special shoe because regular footwear hurts her right great toe. The Arbitrator places some weight on this factor.
- (iii) **Age:** Petitioner was 67 years old at the time of accident. The Arbitrator places some weight on this factor.
- (iv) **Earning Capacity:** There is no evidence of reduced earning capacity contained in the record. Petitioner returned to full duty work without restrictions for Respondent and continues to work in her pre-accident position. The Arbitrator places some weight on this factor.
- (v) **Disability:** As a result of the accident, Petitioner sustained a closed displaced fracture of the base of the proximal phalanx of the right great toe and a tibial sesamoid fracture. X-rays performed on 10/20/23 showed further displacement of the great toe fractures with lateral displacement of the primary fracture fragment of the proximal phalanx and significant comminution of the medial and lateral condyles of the base of the proximal phalanx. There was also collapse of the fracture at the MTP joint. Dr. Bradley noted that ideally Petitioner's fracture would be treated operatively; however, she had unrelated pyoderma gangrenosa and ulcers in her bilateral legs and an operation could not be performed safely. Petitioner was treated conservatively with medications, a cam walker boot, and an elevated heel shoe for approximately five months. On 2/1/24, Dr. Bradley noted Petitioner was doing well and the fracture was healing without significant displacement. Petitioner continued to have some pain with motion of the joint. Dr. Bradley instructed Petitioner to wean off the elevated heel shoe to a regular shoe as tolerated. He released her to full duty work without restrictions.

Petitioner testified that she still has pain and swelling in her toe that is aggravated with weather changes. She has not been able to wean out of the elevated heel shoe as regular footwear increases her symptoms. She takes Aleve and Tylenol 4 for nighttime pain. Petitioner testified that she walks slow and has an altered gait. 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 a right foot, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 2/1/24 through 5/3/24, and shall pay the remainder of the award, if any, in weekly payments.



Arbitrator Linda J. Cantrell

June 24, 2024

DATE

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC026772
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	25IWCC0395
Number of Pages of Decision	12
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	David Jerome
Respondent Attorney	Rich Lenkov

DATE FILED: 9/23/2025

/s/Amylee Simonovich, Commissioner

Signature

23 WC 26772

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

STEVEN VALENTIN,

Petitioner,

vs.

NO: 23 WC 26772

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 causal connection, medical expenses, and prospective medical care, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. 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.

23 WC 26772

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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 \$5,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 23, 2025

O: 09/09/25

AHS/ma

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	23WC026772
Case Name	Steven Valentin v. WKS Restaurant Group
Consolidated Cases	24WC001200;
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	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

v.

WKS Restaurant Group

Employer/Respondent

Case # **23** WC **026772**

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, **4/5/2023**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* 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 **\$0** for medical benefits, for a total credit of **\$0**.

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

ORDER

Respondent shall pay for all reasonable and necessary medical services associated with treatment to the Petitioner's right arm and right knee, as outlined in Petitioner's exhibit 9. 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.

The Arbitrator finds that Dr. Solman's prescribed course of care for Petitioner's right knee and right arm is reasonable, and necessary to cure and relieve the effects of Petitioner's work injury, and orders Respondent to provide and pay for this treatment, pursuant to Section 8(a) and 8.2 and subject to the medical fee schedule, as well as any reasonable, necessary and related follow-up care.

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

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

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



Signature of Arbitrator

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 first injury on April 5, 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 numbing 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)

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. (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)

CONCLUSIONS OF LAW

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

The parties stipulated that Petitioner sustained an injury to right elbow and right knee when Petitioner when a flame shot out of an oven that he was repairing causing Petitioner to jump back and fall. Petitioner's right elbow and right knee struck the tile floor as he fell down. Petitioner had pain in his right knee and right elbow and was approved for treatment at Concentra, where he was diagnosed with having a right elbow partial tear of the common extensor tendon, and lateral epicondylitis. He was also diagnosed with having a right knee sprain and contusion with patellar tendinitis.

Dr. Solman noted ongoing symptoms in the right elbow and right knee. He recommended surgery to the right elbow for the diagnosed condition of lateral epicondylitis. He also recommended conservative treatment in the form of PRP injections for the right knee. Dr. Solman testified that the medical recommendations for the right knee and right elbow were due to the work accident of April 5, 2023. (PX 1, pp. 37-38).

Dr. Gross agreed that the work accident "exacerbated" the condition in the knee and elbow which he testified meant that it the work accident made the conditions symptomatic. Dr. Gross testified that it was the onset of Petitioner's symptoms that necessitated medical care to address those symptoms. (RX 4, pp. 20-22).

While Respondent disputed causation in this matter in reliance on Dr. Gross' definition of "exacerbation," it is well settled that if work-related activity aggravates or accelerates a preexisting condition, it is compensable under the Act. *Sisbro, Inc.*, 207 Ill. 2d 193. Moreover, the Appellate Court recently held in *Tazewell County v. IWCC* that "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. When a preexisting asymptomatic condition becomes painful for reasons other than an organic or structural change or natural progression, it follows that the preexisting condition was aggravated by something. If the aggravation is work-related...and solely causes pain, we hold that the pain suffered is, in and of itself, a compensable aggravation of the preexisting condition." 2025 IL App (4th) 230754WC ¶ 31

Given the credible testimony of the Petitioner, the treating medical records, the sequence of events, and both the treating and examining doctor's respective testimony supporting causal connection, the Arbitrator finds Petitioner's current condition of ill being in his right knee and right arm is causally related to the work accident of April 5, 2023.

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

Incorporating the above, the Arbitrator finds that all of the medical services provided to Petitioner for the treatment to his right elbow and right knee was reasonable, necessary, and related to the work injury. The Respondent has not paid all of the appropriate charges for these reasonable and necessary medical services.

The Respondent shall pay all outstanding medical bills for Petitioner's reasonable and necessary medical care as outlined in Petitioner's Exhibit 9, pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Issue (K): Is Petitioner Entitled to any prospective medical care?

Incorporating the above, the Arbitrator finds that Petitioner is entitled to prospective medical treatment, as he has yet to reach maximum medical improvement. The Arbitrator is persuaded by the opinions and treatment recommendations of Petitioner's treating surgeon, Dr. Solman.

Dr. Solman credibly testified that Petitioner was in need of surgery for the right elbow in the form of a radial tunnel release and cubital tunnel release. Dr. Solman also recommended PRP injections for Petitioner's right knee. The Arbitrator finds that Dr. Solman's prescribed course of care for the right elbow and right knee, as well as any follow up care, is reasonable and necessary to cure and relieve the effects of Petitioner's work injury.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC035204
Case Name	Scott Darby v. D&H Refrigeration Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0396
Number of Pages of Decision	34
Decision Issued By	Amylee Simonovich, Commissioner, Kathryn Doerries, Commissioner

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Daniel Egan

DATE FILED: 9/24/2025

/s/ Amylee Simonovich, Commissioner

Signature

DISSENT

/s/ Kathryn Doerries, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANKAKEE)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SCOTT DARBY,
 Petitioner,

v.

No. 18WC035204

D&H REFRIGERATION, INC. and
 WEST BEND MUTUAL INSURANCE,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, and penalties modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Indus. Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

The record shows that all medical bills had been paid by Blue Cross Blue Shield, Petitioner's medical insurance carrier, or paid out of his pocket. Respondent introduced without objection the ledger of Blue Cross Blue Shield showing payments made, and patient responsibility in both co-pays and deductibles. Respondent argued against liability and that if an award of medical expenses was made it should be based on the lesser of the actual charge, the negotiated rate, or the medical fee schedule. On review, Petitioner seeks to have the medical bills awarded at the negotiated rate, regardless of the lower fee schedule rate.

Section 8(a) of the Workers' Compensation Act (the Act) provides, in pertinent part: "The employer shall provide and pay the negotiated rate, if applicable, or the lesser of the health care provider's actual charges or according to a fee schedule, subject to Section 8.2, in effect at the time the service was rendered 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." 820 ILCS 305/8(a).

The Commission finds Petitioner's interpretation of the statute is inconsistent with the legislative intent to mitigate the costs to the employers of providing reasonable and necessary medical care for work-related injuries. See *Tower Automotive v. Ill. Workers' Comp. Comm'n*, 407 Ill. App. 3d 427, 438 (2011) (the purpose of the Act is satisfied when the employee is relieved of

the costs of reasonable and necessary medical care) and *Perez v. Ill. Workers' Comp. Comm'n*, 2018 IL App (2d) 170086WC, ¶ 22, 96 N.E.3d 524 (the plain language of section 8(a) of the Act indicates that the legislative intent was to provide relief to injured employees only to the extent reasonably required to cure or relieve claimant from the effects of a workplace injury).

The Commission strikes paragraph one of the Order section, as well as sentences two and three of paragraph two on page 15 of the Decision, and substitutes: “Respondent shall pay to Petitioner the reasonable and necessary medical services as set forth in Petitioner’s Exhibit 2 for causally related treatment at Horizon, at the lesser of the fee schedule or negotiated rate as provided in §8(a) and §8.2 of the Act.”

The Commission vacates the award of a hold harmless for amounts claimed by BCBS. Paragraph two of the Order section, as well as paragraph three on page 15 of the Decision, are stricken in their entirety. We find the treatment Petitioner underwent at Lighthouse was causally connected, reasonable, and necessary based on the testimony of Brian Mueller, but insufficient information was introduced to award payment and Respondent did not claim or prove a credit under §8(j), so no hold harmless can be awarded.

The Commission strikes paragraph five of the Order section, as well as the final paragraph of the Decision on page 17. Petitioner did not claim to be owed TTD, and so no late payment of TTD has occurred. Petitioner introduced evidence that Petitioner’s counsel submitted medical bills and requested payment on May 23, 2024. As of that date, Respondent was entitled to rely upon the §12 opinion of Dr. Landre. *USF Holland, Inc. v. Indus. Comm’n*, 357 Ill. App. 3d 798, 805, 829 N.E.2d 810, 293 Ill. Dec. 885 (2005). Petitioner has failed to meet his burdens of proof under §19(k), §19(l), and/or §16. For this reason, we deny the request for penalties.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on August 22, 2024, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the reasonable and necessary medical services as set forth in Petitioner’s Exhibit 2 for causally related treatment at Horizon, 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 shall provide and pay for prospective medical treatment, specifically follow-up treatment as recommended by Brian Mueller consisting of two visits per week for four weeks of EMDR treatment as well as an additional session to reassess Petitioner’s symptoms, pursuant to Sections 8.2 and 8(a) of the Act, as set forth in the Conclusions of law attached hereto.

IT IS FURTHER FOUND BY THE COMMISSION that that no award of penalties or attorney’s fees is merited. The petition for penalties is denied.

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

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

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$10,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 24, 2025

O: 07/29/25

AHS/ps

051

/s/ *Amylee H. Simonovich*

Amylee H. Simonovich

/s/ *Stephen J. Mathis*

Stephen J. Mathis

DISSENT

I respectfully dissent from the majority's affirmance of the Arbitrator's decision finding Petitioner sustained an accidental injury arising out of and in the course of his employment. Petitioner claims he developed post-traumatic stress disorder (PTSD) resulting from an accident on September 5, 2018, during which Petitioner believed he caused injury or death to a co-worker while they were detaching a refrigeration unit from a high ceiling. Petitioner also claims he and his co-worker were simultaneously exposed to a risk of injury or death due to the presence of piping with ammonia which further contributed to his mental trauma. For the reasons set forth below, I find that Petitioner failed to prove the accident rose to the level of a sudden severe emotional shock, which he was required to prove in order establish a compensable psychological injury under the mental-mental theory of recovery. I also disagree with the Arbitrator's finding that Dr. Nancy Landre's section 12 neuropsychological examination results and opinions lacked credibility by reason of her refusal to hand over the raw testing data to Petitioner's attorney. I believe this was improper as the disclosure of the raw testing data to Petitioner was forbidden by the Mental Health and Disabilities Confidentiality Act (740 ILCS 110/3(c)), a fact Dr. Landre referenced during her deposition. This statute, which is clear and unambiguous, permits Dr. Landre to share the raw testing data with another licensed psychologist selected by Petitioner but Petitioner made no such request.

Background

On September 5, 2018, Petitioner was a union pipefitter working at a job site with a co-

worker named Tony as a two-man team assigned the task of removing a refrigeration unit suspended from a ceiling by metal rods. The ceiling was reportedly 30 feet high. Petitioner testified his foreman directed him to use a forklift to prop up the refrigeration unit while his co-worker severed the rods holding the refrigeration unit. Petitioner testified he questioned his foreman about using the forklift for that purpose given the size and weight of the refrigeration unit, but his concern was dismissed by the foreman. The foreman directed Petitioner to use the forklift to lower the refrigeration unit down once the rods were severed.

At the time of the accident, the co-worker was situated atop a scissor-lift next to a wall in order to cut the metal rods. Petitioner was situated in the forklift with the forks raised to hold up the refrigeration unit. Petitioner testified that when the last rod was cut he observed the refrigeration unit tilting in the direction of the scissor-lift and then push the scissor-lift against the wall. (T. 65-66) Petitioner testified he thought he killed Tony. Petitioner testified he was thrown from the forklift onto the floor. He immediately got up and ran towards the wall to check on his co-worker. Petitioner testified he yelled up to Tony, who then reported back, "I'm ok." (T. 68) Tony then climbed down using the lift as a ladder. Before hearing Tony's response, Petitioner testified he was feeling "very upset" and "very worried." (T. 67) Petitioner testified the platform atop the scissor-lift was equipped with a "cage" which was "crushed" by the refrigeration unit. (T. 69) More specifically, the "top was crushed in." (T. 69) According to Petitioner, Tony had laid on the floor of the platform. (T. 69-70) Petitioner explained Tony was able to climb down using the horizontal bars between scissor legs.

Photos showing the scene of the incident were accepted into evidence as a group exhibit identified as PX3. Petitioner testified he took the photos himself following the incident. (T. 59) As seen in two photos marked as PX3A and PX3B, the scissor-lift was parked parallel and adjacent to a concrete wall, perhaps a couple of feet from the wall. The refrigeration unit is seen resting on the forks of the forklift with the weight of the unit causing the forklift to tilt forwards towards the wall, its rear wheels raised off the floor. One side of the refrigeration unit is seen leaning against the top of the scissor-lift, pinning the platform against the wall. The platform atop the scissor-lift on which the co-worker was situated was equipped with guardrails which formed the "cage" described by Petitioner. On the side where the refrigeration unit rested against the scissor-lift, the guardrails appeared slightly bent and sagging inward. Petitioner's testimony describing the scissor-lift as being "crushed" was somewhat of an overstatement given the photographic evidence. Regarding the taking of these photos, Petitioner later testified he and Tony exited the area of the accident, after which Petitioner went back in and took the photos. (T. 83)

Petitioner further testified the refrigeration unit had been connected to pipes which carried ammonia. (T. 76) Petitioner testified that part of the job required them to first shut the valves off and disconnect those ammonia lines before undertaking the removal operation. (T. 76) The photo marked as PX3D showed a collection of long white colored pipes running lengthwise along the wall with attached shorter pipes extending outward, the ends of which were disconnected. Petitioner's attorney then posed questions concerning "the presence of an active ammonia line" during this incident, and what impact, if any, those ammonia lines had on Petitioner's sense of well-being. (T. 77) Not only did these questions assume facts not in evidence, they also assumed facts in conflict with Petitioner's prior testimony. Petitioner testified that ammonia is a dangerous

gas which if leaked could have killed both him and his co-worker. (T. 79) Petitioner testified that this made him feel very angry when he realized the potential danger he faced. (T. 80) Petitioner further testified that he thought the lines would have been drained and “obviously they were still alive.” (T. 80) This testimony conflicted with Petitioner’s earlier testimony that they shut off the valves and disconnected the lines from the refrigeration unit (T. 76), and no foundation testimony was provided to explain on what basis Petitioner believed the lines had not been drained or why the lines needed to be drained given the valves were shut-off and the piping disconnected.

Petitioner testified he called the foreman who had already left the premises to visit another job site. After being apprised of the accident, the foreman returned and together they brought down the refrigeration unit using a set of four “chain falls.” Petitioner described a chain fall as essentially a hook and chain apparatus used to raise or lower heavy objects. (T. 89-90) Petitioner testified that he, Tony, and the foreman worked together to lower the refrigeration unit. (T. 90) Notably, Petitioner provided no testimony indicating they drained the lines prior to lowering the equipment with the chain falls. Petitioner further testified Respondent’s owner, Joe Hankins, terminated his employment four days later via text message on September 9, 2018. (T. 91–94; 98) Petitioner testified the owner conveyed to him that he had placed his co-worker in danger. (T. 92-93) Petitioner testified that Mr. Hankins also mentioned the danger posed from the ammonia lines. (T. 93) Mr. Hankins was not present at the time of the accident and again there was no testimony or other evidence to explain why the ammonia lines were “live” given that pipes were disconnected and the valves were shut-off.

Three days after his termination, Petitioner filed a formal complaint reporting the incident to OSHA. (T. 136; RX5) Documents obtained from OSHA showed the agency received a report on September 12, 2018, regarding a “near-miss accident.” (RX5) According to the documents, OSHA received a report describing an incident where two employees were “exposed to crushed-by hazards” when they attempted to take down an evaporation unit from 30 feet above using a forklift and manlift. There was nothing documented about any risk of danger from live ammonia lines having been reported. (RX5)

Almost a month after the incident, Petitioner saw Brian Mueller, LCPC, at Lighthouse Professional Counseling Center. Petitioner testified he started having nightmares, difficulties with concentration and sleeping, and trouble at work. (T. 100, 116) Petitioner saw the counselor at this clinic for a total nine sessions on September 29, October 6, October 20, October 27, November 3, 2018, November 17, November 24, December 1, and December 14, 2018. The treatment records for those nine counseling sessions were not offered into evidence. The dates of service are known only by virtue of a paid medical benefits statement obtained from Blue Cross Blue Shield which administered Petitioner’s union health care plan. (RX1; T. 113-114)

Petitioner acknowledged receiving a letter from OSHA dated December 13, 2018, explaining the agency had completed its investigation and closed its file. (T. 137-138) On cross-examination, Petitioner agreed there was a gap in treatment between December 2018 and August 2020. (T. 138) Petitioner’s discontinuation of his treatment seemingly coincided with his receipt of the closure letter from OSHA. After a period of about 20 months with no treatment, Petitioner completed an intake questionnaire on August 3, 2020, and treated intermittently with Brian

Mueller from August 5, 2020 through May 8, 2024.

When Brian Mueller was deposed in this case, he testified he formally worked at Lighthouse and later started his own practice known as Horizon Counseling and Wellness. Mr. Mueller was asked why the Lighthouse clinic does not have records of him treating Petitioner. Mr. Mueller testified he has had difficulty contacting the clinic and the owner had “basically ghosted himself” which might explain Petitioner’s difficulty with contacting the clinic. (PX1 at 7) Mr. Mueller commented that the owner had failed to respond to his voice messages, emails, and written notices. (PX1 at 7-8) There is no documentation in evidence showing any subpoenas issued or efforts made to directly secure those records from Lighthouse Professional Counseling Center.

Petitioner testified that Lighthouse clinic had closed, after which he resumed treating with Brian Mueller at Horizon Wellness and Counseling. (T. 102-103) There was no testimony offered explaining how Petitioner came to learn the Lighthouse Clinic had closed and no evidence was offered to corroborate the purported closure of this clinic, and notably, Brian Mueller never testified that Lighthouse had closed. No evidence was offered to rule out a possible change of address, name change, or change in ownership. Petitioner testified to ongoing treatment with Mr. Mueller at Horizon and his desire for more treatment. Petitioner testified he had no knowledge as to whether any subpoenas had ever been issued to Lighthouse seeking his treatment records. (T. 132) Petitioner did not adequately explain in my view why he had no treatment for a period of 20 months. Petitioner further testified he was not claiming any lost time from work in this case and his membership in the Pipefitters union continued through the time of trial, through which he has continued to receive work. (T. 124, 135)

The records from Horizon Counseling and Wellness documented treatments visits with Brian Mueller from August 5, 2020 through September 15, 2023, and two visits in May 2024. (PX2) In a “Diagnosis and treatment plan” summary dated August 6, 2020, Mr. Mueller noted Petitioner was involved in a workplace accident two-years earlier which was nearly fatal for his coworker. (PX2) Petitioner complained of recurrent distressing memories and dreams, flashbacks, irritability, depressed mood, self-blame, and other symptoms. Mr. Mueller further noted Petitioner “endorses some additional history of trauma involving the deaths of two friends, one in childhood and another in college, that he reports thinking about daily.” During other treatment visits, the records reflected other significant stressors unrelated to the work accident. On August 27, 2020, Petitioner reported his former brother-in-law had committed suicide by hanging himself. On October 1, 2020, Petitioner reported possible separation from his wife and agreement to undertake marital counseling. On November 12, 2020, Petitioner reported his father-in-law’s dementia and arguments with his wife regarding the situation. On December 15, 2020, Petitioner discussed ongoing stress at both work and at home which, per Mr. Mueller, were “not related to trauma.” On January 12, 2021, the treatment note documented stress during the holidays relating to his father-in-law’s ill-health and dementia. On February 23, 2021, Petitioner’s counseling session addressed the recent death of his older brother. On March 9, 2021, the treatment note again documented counseling addressing his father-in-law’s health and his wife’s struggles. On May 11, 2021, the treatment note documented stress over his father-in-law’s admission to the hospital.

Brian Mueller testified he treated Petitioner to help with anxiety and trauma related

symptoms in the aftermath of a work-related accident. (PX1 at 8-9) Mr. Mueller testified he initially treated Petitioner in the fall of 2018 at Lighthouse for six months until Petitioner “stopped coming.” (PX1 at 6, 33) Mr. Mueller testified Petitioner returned to re-start treatment on August 5, 2020. (PX1 at 34). Regarding the accident, Mr. Mueller recalled that Petitioner described “quite a bit about it” but noted he does not have access to the initial treatment records since he does not own those records. (PX1 at 9) Mr. Mueller testified the accident involved an event that Petitioner experienced as well as observed since it also involved a co-worker. Mr. Mueller testified he was currently treating Petitioner for PTSD, which was the same condition he treated Petitioner at the Lighthouse. Mr. Mueller opined that Petitioner’s PTSD was causally related to the accident at work. On cross-examination, Mr. Mueller testified that his treatment records at Horizon did not include any history of the work accident previously obtained in 2018. (PX1 at 33) Mr. Mueller further testified that his records at Horizon “only covers the time I’ve been seeing him since he came and saw me at my private practice.” (PX1 at 33) Mr. Mueller further testified:

See, and this is where I wish I did have those records, because I can't give exact dates. I'm going solely on memory now. And I don't know how reliable that aspect is. You are asking me to go back to 2018 or 2019. And I know we met we probably worked together for about six months and then he stopped coming. (PX1 at 33)

On continued cross-examination, Mr. Mueller testified it was his understanding that Petitioner was working on the lift with his co-worker. (PX1 at 34) It was Mr. Mueller’s understanding that there was an accident while they *both* worked on the scissor-lift during which Petitioner saw a piece of equipment fall and pin his co-worker against the wall. (PX1 at 34). This is of course inconsistent with the facts of the accident as Petitioner was in the forklift on the floor 30 feet below and observed the refrigeration unit tilt towards the scissor-lift and pin the lift against the wall; the co-worker’s body was not pinned against the wall.

Dr. Nancy Landre performed a section 12 neuropsychological evaluation at Respondent’s request, during which Petitioner underwent a battery of tests. Dr. Landre opined that Petitioner’s clinical presentation during the examination included a component of malingering based on inconsistent test results. (RX2 at 47)

Analysis

In *Pathfinder Co. vs. Industrial Com.*, 62 Ill. 2d 556, 343 N.E.2d 913 (1976), the Supreme Court recognized for the first time that the Act permits compensation for psychological injury brought about by mental trauma in the workplace even in the absence of any physical injury or trauma, provided that the employee can establish he suffered “a sudden, severe emotional shock” traceable to a definite time and place and which causes the psychological injury or harm. Prior to the Court’s decision in *Pathfinder*, mental disability was compensable only if it was precipitated by actual physical injury or contact. In *Pathfinder*, the claimant trained a co-worker regarding the operation of a punch press machine, after which the claimant heard a scream and discovered the co-worker suffered an amputation of the hand in the press. The claimant reached into the machine to remove the severed hand, promptly fainted, and later woke up in the emergency room. She then developed psychological problems. The Court’s holding in *Pathfinder* later became known as

establishing the mental-mental theory of recovery. In its decision, the Supreme Court commented that that any concerns its holding may encourage future claims by malingering employees was unfounded but further noted, “[t]his is not to say of course that the Commission need not continue to be vigilant in the assessment of claims which might be easily fabricated or exaggerated.” *Pathfinder*, 62 Ill. 2d at 567.

As recognized by this Commission, “[w]hile there is no delineated threshold or measurement of “gruesomeness” or “shock” that a claimant must pass in order to establish a claim, “mental-mental” cases deemed compensable reveal that **the triggering event must be sufficiently uncommon as to be extreme.**” (Emphasis in original.) See *Zaks vs. State of Illinois, Department of Juvenile Justice IYC Chicago*, 20 IWCC 0548; 2020 Ill. Wrk. Comp. LEXIS 876. Furthermore, given the high legal standard required to satisfy the mental-mental theory of recovery, a claimant may have a proven psychological injury with proven causation connecting the mental injury to the work accident and still be precluded from compensation if the accident fails to rise to the level of a sudden severe emotional shock. *Id.* In affirming and adopting the arbitrator’s conclusions in *Zaks*, the Commission determined that the evidence demonstrated the claimant “likely does suffer PTSD and other emotional/mental conditions *as a consequence of the events of September 7, 2018; however, the evidence does not prove the events rose to the level necessary to show Petitioner was exposed to a ‘severe, sudden emotional shock’ as case law requires.*” (Emphasis added.) *Id.* The Commission further noted that the facts must still meet the threshold proof of a sudden severe emotional shock which is a legal conclusion, not a medical conclusion. *Id.*

In the years following *Pathfinder*, several cases have come before the Appellate Court which have helped to further illustrate the types of events that meet this legal threshold requiring a “sudden, severe emotional shock.” In *Matlock vs. Industrial Comm’n*, 321 Ill. App. 3d 167, 746 N.E.2d 751 (2001), a flight attendant established a compensable psychological injury under both physical-mental and mental-mental theories of recovery when a disturbed passenger, after telling several flight attendants that the FBI was trying to kill her, began crying and complaining she was unable to breath, and then attempted to ignite the oxygen container provided to her with a cigarette lighter, and when that failed, sprayed herself with a chemical which caused the claimant to feel nausea, dizziness, and heart palpitations. She promptly received three counseling sessions through the employer and later sought treatment five days later with another treating provider. In *Chicago Transit Authority vs. Illinois Workers’ Comp. Comm’n*, 2013 IL App (1st) 120253WC, a compensable claim was found under the mental-mental theory where a bus operator, after hearing a passenger yell out that a pedestrian chasing the bus had been hit, exited the bus and observed the pedestrian lying on the pavement in a fetal position near the curb, with his mouth moving but making no sound. After the injured pedestrian was taken away by ambulance, the claimant remained at the scene for four hours during the ensuing police investigation, and then learned on her return to the garage that the pedestrian had died. The claimant suffered from depression, flashbacks of the victim lying in the street, and difficulty sleeping. In *Diaz vs. Illinois Workers’ Compensation Comm’n*, 2013 IL App (2d) 120294WC, the Appellate Court ruled that a police officer had a compensable claim under the mental-mental theory where the officer developed post-traumatic stress disorder after encountering a subject approaching with a gun pointed at him. About 10-15 seconds into the confrontation, after the subject came closer, the claimant noticed the gun had an orange tip and suspected the gun was probably a toy gun; however, the initial sighting

of what appeared to be a real gun pointed at the claimant for 10-15 seconds was sufficient to establish a sudden severe emotional shock. The Court in *Diaz* further ruled that when deciding whether a worker has suffered “the type of emotional shock” sufficient to warrant recovery, the question should be determined by an objective, reasonable person standard, rather than a subjective standard. *Id.* at P33. And in *Moran vs. Illinois Workers’ Compensation Comm’n*, 2016 IL App (1st) 151366WC, 59 N.E.3d 934 (2016), the Court determined a claimant, employed as a firefighter with the rank of lieutenant, had established a compensable claim under the mental-mental theory after a firefighter under his command died while combatting a fire. In that case, the claimant was surveying the house while directing the firefighters when he observed a flashover (sudden spread of flame) and heard others yell out that “Carey was still in the house” as other firefighters came out. The claimant later witnessed Carey being dragged out from the house. Carey later died from his injuries. The claimant along with other firefighters were transported from the scene to the station to meet with clergy and support staff. A “critical incident stress debriefing team” was brought in to assist the firefighters, and all fire suppression duties were suspended. The claimant had flashbacks, feelings of guilt since he was the one in command, and later diagnosed with PTSD.

Based on the totality of the evidence presented in the instant case, the accidental tipping of the refrigeration unit into the scissor-lift against the wall did not rise to the level of a sudden severe emotional shock as is required under *Pathfinder* and its progeny. Though Petitioner testified he thought he killed his co-worker, any belief or worry Petitioner had regarding possible injury or death was momentary, as Petitioner quickly yelled up to his co-worker who replied he was “okay.” The co-worker then climbed down the scissor-lift under his own power with no injury or harm sustained. Petitioner testified that neither he nor his co-worker sustained any physical injury. They both departed the area, after which Petitioner returned to take photos of the scene. This action taken by Petitioner to return to the scene and take photos was at odds with a sudden severe emotional shock. Petitioner’s co-worker also helped lower the refrigeration unit after the foreman returned, during which Petitioner could continue observing his co-worker working without injury. Petitioner did not faint or feel any heart palpitations or have any other physical response during or immediately after the accident. Petitioner did not require immediate medical attention, and he continued working until his termination four days later. Petitioner then filed a complaint with OSHA and waited about a month before seeking treatment. Coincidentally, Petitioner discontinued treatment when he received the closure letter from OSHA and had no further treatment for a period of approximately 20 months despite having health insurance coverage through his union. Petitioner also continued to obtain work through the union and did not claim any lost time from work in this case.

Additionally, Petitioner failed to offer his initial treatment records into evidence. Petitioner received counseling with Brian Mueller at Lighthouse Professional Counseling Center on nine occasions between September 19, 2018 and December 14, 2018, after which Petitioner had no further treatment for a period of approximately 20 months before re-starting treatment with Brian Mueller in August 2020, who by that time had opened his own practice. Mr. Mueller did not have possession of the records documenting his earlier treatment at the Lighthouse. As mentioned, there was no evidence presented showing attempts to subpoena those records and no evidence to show what additional efforts, if any, were attempted to secure those records directly from the Lighthouse. Petitioner had already retained legal representation and filed his Application for Adjustment of

Claim while treating at Lighthouse in 2018. In my view, those missing medical records were critical given that Petitioner's claim was based on the mental-mental theory of recovery. Without those initial treatment records, there was no evidence to show what, if any, physical responses and psychological signs or symptoms Petitioner exhibited during or after the incident, and Brian Mueller could not testify with any degree of specificity or meaningful historical details regarding those initial treatment visits.

Because it was Petitioner's burden to prove he suffered a sudden severe emotional shock traceable to the incident at work, the absence of those early treatment records was in my judgment a critical omission, particularly given the 20-month gap between the cessation of treatment in December 2018 and the re-start of treatment in August 2020. This omission was also significant based on Petitioner's testimony describing how he was unfairly blamed for the accident and terminated despite his having complied with the instructions of the foreman who disregarded Petitioner's concerns regarding the equipment selected for the job assignment. Petitioner's testimony regarding the circumstances of his employment termination, coupled with his filed OSHA complaint, raises a question regarding his credibility. The majority is willing to overlook the missing treatment records since Petitioner's treating mental health counselor testified in this case; however, the majority simultaneously denies medical benefits for those nine sessions at the Lighthouse based on the absence of those records. This creates an internal inconsistency, since on the one hand the majority finds the absence of those records significant enough to deny medical benefits for the treatment visits at the first clinic, while on the other hand the majority forgives the absence of those same records in finding Petitioner suffered a sudden severe emotional shock causally related to the accident.

I find this case more akin to the claim encountered in *Boyd vs. Chicago Transit Authority*, 13 IWCC 628; 2013 Ill. Wrk. Comp. LEXIS 621. In *Boyd*, the claimant was operating a train and passing through a tunnel when he saw two young males attempting to run across the tracks. The claimant applied the hand brake and emergency cord but struck the second person with the train. The claimant was unable to see the impact from his vantage point but heard a thump. After the impact, he looked out the train window and saw the injured person lying on the tracks. The claimant testified he thought he killed the young male and felt extremely disturbed. The claimant deboarded the train with a flashlight and then saw both persons running away. Claimant yelled to them but they never looked back and hopped a fence. Claimant sought treatment with Dr. Daniel Kelley, a clinical psychologist, whose records noted the claimant was "real shaken up" and experiencing sleep disturbance, fatigue, hyper arousal, nervousness, flashbacks, and headaches. Dr. Kelly diagnosed adjustment disorder with mixed anxiety and depressed mood and treated the claimant with "exposure therapy" which had helped somewhat but the claimant had not worked since the date of accident. The Arbitrator determined the claimant failed to establish a compensable psychological injury under the mental-mental theory of recovery. On review, the Commission affirmed and adopted the arbitrator's decision, and pertinent to the case at bar, the decision expressed the following:

While the Arbitrator found Petitioner's testimony credible as to the circumstances surrounding the incident - namely, that two young men ran in front of the train he was operating, and that one of the youths may have struck the side

of the car - ***the fact of the matter is that both individuals subsequently got up, jumped a fence and ran away under their own power. Petitioner, therefore, was not forced to confront the same kind of extraordinary, horrific and/or gruesome aftermath as the claimant in Pathfinder.*** (Emphasis added, underlining in original.) *Id.*

Similarly, in *Smith vs. Chicago Transit Authority*, 14 IWCC 459, 2014 Ill. Wrk. Comp. LEXIS 485, the Commission affirmed the arbitrator's decision finding a train operator failed to prove a sudden severe emotional shock. In that case, the train operator observed a man "jumping off" the platform as she approached the station. The claimant did not know the speed she was traveling and admitted she brought the train to a stop without needing to apply the emergency brake. The claimant testified she observed this man on the tracks and it appeared to her that he fell onto the electrified third rail but she could not clearly see that far. The claimant testified the man appeared lifeless and she did not know if he was okay. The claimant further testified she thought the man was dead and she was in shock. The claimant testified she was shaking, crying, and hyperventilating. On cross-examination, however, the claimant conceded she later saw the man get up. A report referred to as the "Rail Control Record" memorialized a call from the claimant during which she reported an unauthorized person entered the right-of-way ahead of the train and stated the person then "*got off the right-of-way and fled the station.*" Likewise, a Special Occurrence Report also noted the claimant reported the person got back onto the platform and fled. The Commission affirmed and adopted the Arbitrator's determination that the claimant failed to credibly prove she sustained a sudden severe emotional shock as a result of the incident.

Like the train operators in *Boyd* and *Smith*, Petitioner in the case at bar immediately became aware that his co-worker did not sustain any harm as a result of the incident. Any initial momentary fear or worry over possible death or injury to his co-worker was quickly dissipated upon being told "I'm okay" and observing his co-worker climb down the scissor-lift. Applying the objective reasonable person standard which is required for determining whether a claimant has suffered a sudden severe emotional shock, the facts here do not meet the *Pathfinder* test. The instant case is distinguishable from *Diaz*, supra. Though the claimant police officer in *Diaz* was confronted by a handgun pointed directly at his person for a period of 10-15 seconds before observing the orange tip at the end of the barrel, there is a qualitative difference between one who is on the receiving end of a traumatic experience compared to one who occupies the position of a participating witness. In short, in the instant case it was the co-worker Tony who was faced with the sight of the refrigeration unit coming towards him while situated 30 feet above the floor while Petitioner was situated on the floor below and out of harm's way. In affirming the arbitration decision, the majority expands the mental-mental theory of recovery to allow compensation for emotional trauma based on a claimant's momentary belief of a potential but non-existent injury or death extending to every work-related motor vehicle accident, equipment malfunction, and workplace incident occasioned by a co-worker in the claimant's presence.

Petitioner also alleges he was exposed to a very dangerous risk of death or injury due to the presence of live ammonia lines. This allegation was not supported by the evidence. Petitioner's testimony regarding the ammonia lines was contradictory in several respects. First, Petitioner initially testified they shut off the valves and disconnected the piping from the refrigerator unit.

(T. 76) Petitioner then testified that he would have thought the lines would have been drained and that the lines were “obviously live.” (T. 80) This begs the question; how could the lines have been “live” if they had already shut off the valves? Second, Petitioner described how he questioned his foreman about using the forklift to prop up the refrigerator unit given its weight and size, and yet he never described warning the foreman about the ammonia lines. If the ammonia lines were as “obviously live” as described by Petitioner, then it would be reasonable to expect the ammonia lines would have also been a topic of discussion with his foreman. Additionally, Petitioner asserted he “would have thought the lines would have been drained” but there was no foundational testimony to establish that the lines *had not* been drained or why he believed the lines had not been drained. Furthermore, when Petitioner reported the incident to OSHA, he only reported the impact from the refrigeration unit against the scissor lift but made no mention of any risk of danger from ammonia lines. These contradictions in my view negatively impact Petitioner’s credibility. As such, the purported risk of an ammonia leak, and by extension, Petitioner’s purported fear and concern stemming from the ammonia lines, was unsubstantiated and of questionable credibility.

Finally, I disagree with the finding that Dr. Landre’s neuropsychological testing and opinions lacked credibility based on her refusal to hand over the raw testing data to Petitioner’s attorney. Disclosure of mental health treatment records is governed by the Mental Health and Disabilities Confidentiality Act. (740 ILCS 110/1, *et seq.*) As a starting point, section 3(a) provides that all records and communications made or created in the course of providing mental health or developmental disabilities services shall be protected from disclosure, regardless of the existence of a therapeutic relationship. (740 ILCS 110/3(a).) Patients older than age 12 are entitled to inspect and copy their mental health records under section 4(a). (740 ILCS 110/4(a).) Additional provisions permit other authorized persons access to such records; i.e., parents and guardians and personal representatives. (740 ILCS 110/4(a).) Pertinent to the case at bar, section 3(c), which expressly governs psychological test material, provides as follows:

(c) **Psychological test material** whose disclosure would compromise the objectivity or fairness of the testing process **may not be disclosed to anyone including the subject of the test and is not subject to disclosure in any administrative, judicial or legislative proceeding.** However, any recipient who has been the subject of the psychological test shall have the right to have all records relating to that test **disclosed to any psychologist designated by the recipient.** Requests for such disclosure shall be in writing and shall comply with the requirements of subsection (b) of Section 5 of this Act. (Emphasis added.) (740 ILCS 110/3(c).)

As set forth in this provision, psychologists are forbidden from disclosing raw data from psychological testing to anyone including the subject of the testing and further, disclosure is forbidden in any judicial or administrative proceeding. The provision authorizes psychologists to disclose the raw data to any psychologist designated by the recipient (i.e., claimant) when requested in writing and when requested in a manner complying with the requirements set forth in section 5(b). (740 ILCS 110/5(b).)

This issue previously came before the Commission in *Massey vs. Schwan's Food*, 7 IWCC 471; 2007 Ill. Wrk. Comp. LEXIS 498. In that case, the Commission reversed the arbitrator's ruling granting the claimant's Motion in Limine seeking to exclude the reports and deposition of the employer's section 12 evaluating psychologist based on the non-disclosure of the raw testing data. After reviewing the above statute, the Commission determined that "as it currently stands the Arbitrator in an attempt to uphold Petitioner's due process rights did not uphold the Mental Health and Developmental Disabilities Confidentiality Act and conversely violated Respondent's due process right by not allowing Respondent to put forth a complete defense of this claim." Accordingly, the Commission remanded the case back to the arbitrator with instructions to allow claimant to obtain the requested information in the manner authorized by the Mental Health and Disabilities Confidentiality Act. In the case at bar, the Arbitrator correctly denied Petitioner's motion to exclude and there is no reason to remand this case back to the arbitrator; however, the Arbitrator then improperly determined that Dr. Landre's findings and opinions in this case lacked credibility based on the non-disclosure of the raw testing data.

Notably, in *Hrnjic vs. Mercedes-Benz of Westmont*, 21 IWCC 0472; 2021 Ill. Wrk. Comp. LEXIS 381, the Commission's recitation of the evidence revealed that Dr. Landre, the same section 12 evaluating psychologist in the case bar, produced the raw data from her psychological testing to the claimant's expert, Dr. McManus. This case demonstrates, contrary to the accusations leveled by Petitioner's attorney during Dr. Landre's deposition, that she is not one to "hide" the raw data underpinning her reporting of test results; rather, she complies with the statutory obligations imposed on her by our legislature.

For the above reasons, I dissent from the majority's opinion and would reverse the Arbitrator's decision as I would find Petitioner failed to prove he sustained a compensable psychological injury arising out of the employment under the mental-mental theory of recovery.

/s/ Kathryn A. Doerries
Kathryn A. Doerries

September 24, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC035204
Case Name	Scott Darby v. D&H Refrigeration Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Frank Soto, Arbitrator

Petitioner Attorney	Kurt Niermann
Respondent Attorney	Daniel Egan

DATE FILED: 8/22/2024

/s/ Frank Soto, Arbitrator
Signature

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Scott Darby
 Employee/Petitioner

Case # **18** WC **035204**

v.

Consolidated cases: _____

D&H Refrigeration, Inc. and West Bend Mutual Insurance
 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 **Frank Soto**, Arbitrator of the Commission, in the city of **Kankakee**, on **May 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. ☒ 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 **Admissibility of items offered into evidence**

FINDINGS

On the date of accident, **September 5, 2018**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$91,484.12**; the average weekly wage was **\$1,759.31**.

On the date of accident, Petitioner was **56** years of age, *married* with **no** dependent children.

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

Respondent shall be given a credit of **\$0.00** 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

Respondent shall pay the lesser amount of either the negotiated rate paid by BCBS or for the services provided by Brian Muller (Horizon) identified in Px. 2 pursuant to Sections 8(a) of the Act subject to the fee schedule in Section 8.2 of the Act. In the event Respondent elects to be liable for the sums paid by BCBS than Respondent shall hold Petitioner harmless for those services provided by Brian Mueller (Horizon) paid by BCBS, as set forth in the Conclusions of law attached hereto.

Respondent shall hold Petitioner harmless for amounts claimed by BCBS for treatment Petitioner received at Lighthouse from September 19, 2018 through December 14, 2018, as identified in Rx.1 and 1A, not to exceed of the lesser amount of either the negotiated rate or the fee schedule amount as provided in Sections 8(a) and Section 8.2 of the Act, as set forth in the Conclusions of law attached hereto.

Respondent shall reimburse Petitioner the sum of \$2,817.92 for copayments or deductibles paid to Brian Mueller (Horizon), as set forth in the Conclusions of law attached hereto.

Respondent shall authorize and pay for prospective reasonable and necessary treatment recommended by Brian Muller, consisting of two visits per week for four weeks of EMDR treatment as well as an additional session to reassess Petitioner's symptoms, pursuant to Sections 8.2 and 8(a) of the Act, as set forth in the Conclusions of law attached hereto.

The issue of penalties is stayed and/or reserved until the hearing on permanency, as set forth in the Conclusions of law attached hereto.

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.

By: /s/ Frank J. Soto
Arbitrator

August 22, 2024

Procedural History

This case proceeded to trial on May 24, 2024 pursuant to Sections 19(b) and 8(a) of the Act. This case involves a mental-mental theory of recovery. The disputed issues include accident, causation, medical bills, prospective medical treatment, and penalties. (Arb. Ex. #1).

At the conclusion of the trial, Respondent objected to the admissibility of Petitioner's Exhibit #5 based upon lack foundation, hearsay, relevance, and prejudice (*i.e.*, Px. 5 is a photocopy of a partial text message exchange between Petitioner and Joe Hankins, the owner of company). (T.149,150, 155). The admissibility of Petitioner's Exhibit #5 was taken under advisement and is addressed below. (T.155, 157).

Petitioner made two separate objections regarding the admissibility of the Section 12 examiner's opinions and/or testimony. Petitioner first asserts a violation of a motion to exclude witnesses. Second, Petitioner seeks to bar the testimony of the Section 12 examiner based upon the failure to provide requested information prior to the Section 12 examiner's evidence deposition. The Section 12 examiner, Dr. Landre, performed a neuropsychological evaluation and prior to her evidence deposition, Petitioner requested copies of testing materials and scales used to interpret Petitioner's test scores which Respondent failed to produce. (T.15, Rx. 2, pgs. 12-13, 15, 32). The admissibility of Respondent's Exhibit #2 was also taken under advisement.

Regarding the admissibility of Petitioner's Exhibit #5, the Arbitrator sustains Respondent's objection and, therefore, the exhibit shall not be admitted into evidence. The exhibit consists of an incomplete text message exchange between Petitioner and the owner of the company, Mr. Hankins. The exhibit did not include Petitioner's portions of the text message exchange. Petitioner asserts the exhibit qualifies as an admission against interest. (T.149). Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence. (See Illinois Rule of Evidence 403, eff. January 1, 2011).

The Arbitrator finds, under the facts in this case, the danger of unfair prejudice outweighs the probative value of the exhibit¹. Without being able to fully appreciate the full scope of the

¹ The exhibit will remain part of the record as a rejected exhibit. It appears the partial text message exchange was offered to rebut statements that may have been made by Mr. Hankin to an OSHA investigator regarding whether Petitioner reported the incident. The Arbitrator notes that Mr. Hankin did not testify at trial nor did any witnesses testify for Respondent rebutting Petitioner's trial testimony about reporting the incident. Had Mr. Hankin testified

conversation, the context of those comments is unknown resulting in the need to speculate, surmise or guess as to the context of the comments which creates the danger of unfair prejudice that outweighs the probative value of that evidence.²

Regarding the admissibility of Respondent's Exhibit #2 based upon a violation of a motion to exclude, the Arbitrator denies Petitioner's motion to exclude the testimony and/or opinions of Respondent's Section 12 Examiner, Dr. Nancy Landre. Rule 615 of the Illinois Rules of Evidence states "*At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses...*". Section 7030.70(a) Rules Governing Practice Before the Illinois Workers' Compensation Commission states "*The Illinois common law rules of evidence and the Illinois Evidence Act (820 ILCS 305) shall apply in all proceedings had before the Industrial Commission, either upon arbitrator or review, except to the extent they conflict with the Workers' Compensation Act, the Workers' Occupation al Disease Act or the Rules Governing Practice Before the Industrial Commission.*" 50 Illinois Admin. Code Section 7030.70(a). A motion to exclude witnesses should be made when the hearing begins which is the time the parties start to present their case before an arbitrator. *City of Chicago v. Ill. Workers' Compensation Comm'n*, 387 Ill. App. 3d 276, 279-80 (First Dist. 2008). The Arbitrator also notes some Commission decisions imply that a motion to exclude witnesses could also be made at an evidence deposition which is prior to the parties appearing before the arbitrator. *See generally, Kuhn v. Kansas Community Unit School Dist.*, 13 IWCC 1123, 2013 WL 7022639, *Lenhardt v. Executive Construction*, 92 ILWC 14503, 1999 WL 33321306.

In this case, Petitioner never made a motion to exclude witnesses at the time the parties started to present their case before the arbitrator or at the beginning of any of the evidence

at trial denying that Petitioner reported the incident, Respondent's motion would not have been sustained because, in that situation, the probative value of the evidence would outweigh the danger of unfair prejudice and Mr. Hankin's statements would qualify as a hearsay exception. The Arbitrator notes that no objection was made regarding the admissibility of the OSHA report, which contained Mr. Hankins's alleged statements. Had an objection been made, it is likely the OSHA report would not have been admitted into evidence. *See McManus v. Illinois Workers' Compensation Comm'n*, 2016 Ill. App. 5th 150067).

² At trial Respondent requested Petitioner to proffer the full text message exchange between Petitioner and Mr. Hankins. The Arbitrator notes that pursuant to Illinois Rule of Evidence 106, when a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction, at that time, of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. In this case, Respondent requested the full text message exchange which Petitioner did not provide. As such, fairness required the full text message exchange.

depositions. At the start of Dr. Landre's deposition Petitioner objected to her trial testimony and opinions based upon a violation of a motion to exclude witnesses but no motion to exclude witnesses was previously made and granted. Since no motion to exclude witnesses was made the motion to exclude the testimony and/or opinions for violating the motion to exclude is hereby denied. *See generally, Parro v. Industrial Comm'n*, 260 Ill.App.3d. 551, 553, 630 N.E.2d 860 (1993), *Gatto v. Curtis*, 6 Ill.App.3d 714 (First Dist. 1972).

As to the admissibility of Respondent's Exhibit #2 based upon Respondent's failure to provide requested information prior to the deposition of the Section 12 examiner, the Arbitrator finds that the failure to provide the requested information does not *ipso facto* require the exclusion of the testimony or opinions. As such, Petitioner's motion to strike the testimony and/or opinions based upon the failure to produce requested information is denied.³ During Dr. Landre's deposition, Petitioner also renewed his objections to Dr. Landre's opinions based upon the failure to provide requested information including Petitioner's test scores, testing data, and research supporting the tests performed. (Rx.2, pgs. 10, 11, 12, 32, 33, 34, 35, 36). Dr. Landre acknowledged not providing the raw test results, test questions, and manuals. (Rx.2, pgs. 133-136). Dr. Landre also acknowledged that Petitioner would be unable to obtain the tests or test manuals from the test publisher. (Rx.2, p. 133). Dr. Landre testified that she is prohibited from divulging the requested information to anyone other than a licensed psychologist but she would be willing to disclose the requested information to a qualified expert retained by Petitioner. (Rx.2, p. 35, 135).

The record is unclear as to the true basis supporting Dr. Landre's position. She claims both a statutory and contractual basis for her nondisclosure. Because Dr. Landre doesn't identify the specific statute relied upon nor identify the specific test publishers with nondisclosure agreements or provide copies of those nondisclosure agreements, the Arbitrator is unable to determine whether her failure to disclose is appropriate. Petitioner claims the disclosure is permitted under the

³ During the evidence deposition of Dr. Landre, Petitioner made numerous objections to her opinions based upon violations of *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d. 840 (1996). Petitioner does not argue he was not provided copies of Dr. Landre's reports within 48 hours of the deposition. Petitioner asserts the failure to provide the previously requested information creates the *Ghere* violations. The Appellate Court recently held Section 12 of the Act requires the employee to be provided "a statement in writing of the condition and extent of the injury" at least 48 hours prior the time the case is set for hearing but not that the section 12 examiner must also provide the items reviewed by the examiner 48 hours prior to the deposition. See *Borst v. Illinois Workers' Compensation Comm'n*, 2024 IL App. (2d) 230124WC-U (2024). The Arbitrator denies Petitioner's *Ghere* objections for not providing the requested information at least 48 hours prior to her deposition.

American Psychological Association's Guidelines under Disclosure of Test Data and Test Materials. (Rx.2, pgs. 128-131).

The Arbitrator finds the failure to disclose the requested information undermines the persuasiveness of the Section 12 examiner's opinions. The Arbitrator notes the failure to provide the requested information hinders Petitioner's ability to fully and/or thoroughly effectively cross exam Dr. Landre. Without the requested information, Petitioner is unable to confirm adherence to test administration and interpretation standards. Petitioner was not provided the test cut off scores to confirm whether he passed or failed any tests. Assuming he failed a test, Petitioner has been prohibited from knowing whether he slightly or significantly failed the tests and without the interpretation standards used, Petitioner is prohibited from confirming whether the failing classification was appropriate. For example, it may not be appropriate to categorize a test score as failing when an individual slightly fails a test if the interpretation standards require the test administer to adjust the score based upon other factors such as an individual age, learning disabilities or other existing conditions such as depression. Without the requested information Petitioner is also unable to confirm whether the validity testing, if performed, followed administration and/or interpretation standards. Although the Arbitrator finds the failure to produce the requested information doesn't require striking of the Section 12 examiner's testimony and/or opinions but the failure to produce the requested information is a sufficient basis to find her opinions unreliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d. 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003).

Finding of Fact

Scott Darby (hereinafter referred to as "Petitioner") testified that he was employed as a pipefitter on September 5, 2018 with D & H Refrigeration, Inc. (hereinafter referred to as "Respondent"). (T.54). On that date, Petitioner, and a co-worker named Tony, were at a job site to remove a large refrigeration unit suspended from the ceiling by metal rods. (T.55, 58, 60, 61). Petitioner said the refrigeration unit (hereinafter referred to as the "unit") was about the size of a small bus. (T. 55).

Petitioner testified he was directed by his foreman, Arden, to place a forklift under the unit while another employee, Tony, used a manlift to reach the unit and cut the metal rods holding up the unit. (T.63). Petitioner testified he questioned his foreman about using the forklift because he wasn't sure the forklift could support the weight of the unit. (T.63). Petitioner testified the forklift

was not owned by Respondent but belonged to the warehouse and was used to carry pallets of food. (T.63). Petitioner testified his foreman said that it should be fine. (T.64).

Petitioner positioned the forklift under the unit while his co-worker, Tony, used the manlift to reach the unit, which was suspended about 30 feet above the ground. (T. 64-65). As Tony was cutting the last rod, the unit dropped onto the forks of the forklift causing the forklift to tilt forward. Once the forklift tilted forward the unit fell forward toward the manlift crushing its cage against the wall. (T.66-69, Px. 3). The unit remained suspended in the air caught between the manlift and wall. (Id.). Petitioner testified he was thrown to the floor when the forklift titled forward. (T.66). Petitioner testified he was very upset and worried believed Tony was killed. (T.67-68). Petitioner got up and ran over to the manlift screaming for Tony. (T.68). Tony responded saying that he was okay. (Id.). Petitioner testified Tony laid down on the floor of the manlift as the unit started to fall toward him preventing him from being crushed. (Id.).

When Petitioner ran to the manlift, he noticed yellow pipes containing ammonia, used in the refrigeration process, were not drained. Petitioner testified the ammonia lines were disconnected but not drained. Petitioner testified the lines should have been drained because ammonia is a very dangerous gas and had it escaped would have killed himself and Tony. (T.77-81). Petitioner testified this situation also made him very upset because the ammonia lines not being drained was the second thing that day which could have resulted in someone's death. Petitioner stated the thought of him and Tony dying was "Too much". (Id.). After Tony was down from the manlift, Petitioner reported the incident to his foreman, Arden. (T.85).

Petitioner testified after the incident he started to experience nightmares, trouble concentrating at work and sleeping making it dangerous driving to work. (T. 100). Petitioner testified based upon the encouragement of his wife, he sought treatment with a therapist. (T.101,103). Petitioner started treating with therapist Brian Mueller, at the Lighthouse, on September 29, 2018. (T.130).

Petitioner testified OSHA investigated the incident and around that time Respondent terminated his employment.⁴ (98-99). The record is unclear if Petitioner's employment was terminated prior to or after the incident was reported to OSHA. It appears a complaint with OSHA was filed on September 12, 2018. (Rx.5).

⁴ At trial, Petitioner acknowledged reporting the incident to OSHA. (T.136). The identity of the individual who reported the incident to OSHA was not contained in the OSHA report.

Petitioner testified he sought treatment due to the work incident. (T105). Petitioner testified he treated at Lighthouse from September 29, 2018 to December 14, 2018. (T.130, 132). Petitioner testified Lighthouse closed and he followed Brian Mueller to Horizon Counseling and Wellness (Horizon). (T.103). Petitioner acknowledged he did not attend counseling from December 14, 2018 to August 4, 2020. ⁵ (T. 130-132). Petitioner testified that he continues to treat with Brian Mueller. (T.103). Petitioner testified he has gotten better with treatment. (T.106). Petitioner testified that he still has trouble using a forklift or manlift. (T.109). Petitioner testified he continues to work but that he avoids jobs requiring the use of a forklift or lift. (T.110).

Petitioner testified prior to his work incident he never had concerns about using lifts or being in elevated positions. (T.111). Petitioner testified, since the work incident, he continues to experience anxiety triggered by using lifts. When this happens, Petitioner gets shaky and nervous causing him to cling to the lift. (T.112). Petitioner testified he still suffers nightmares about the accident and almost killing Tony but the frequency of the nightmares depends upon experiencing triggering events at work. (T.114, 116). In addition to the anxiety and nightmare, Petitioner also started to suffer from depression which Brian Mueller helped him overcome. (T.118). Petitioner testified prior to the work incident he never suffered from depression. (T.118,119). Petitioner testified he would like to continue treating with Brian Mueller. (T.112).

On cross examination, Petitioner acknowledged not suffering any physical injuries resulting from falling out of the forklift. (T.125). Petitioner also testified his counseling bills were paid by his insurance carrier, Blue Cross Blue Shield. (T.133).

Testimony of Brian Mueller, the professional counselor who treated Petitioner

Brian Mueller is a licensed clinical professional counselor who practice focuses upon the areas of trauma, adjustment disorders, grief, marriage, mood disorders, and anxiety disorders. (Px.1, p.5).

Mr. Mueller started treating Petitioner in the fall of 2018 at Lighthouse and resumed treating Petitioner on August 5, 2020 at Horizon. (Px.1, p. 8). Mr. Mueller testified he treated Petitioner for six months at Lighthouse until Petitioner stopped coming. (Px.1, p. 33). Mr. Mueller testified Petitioner returned to treatment on August 5, 2020. (Px.1, p.34). Mr. Mueller testified Petitioner's work situations made it difficult for him treat regularly. (Px.1, p.13).

⁵ It is unclear from the records when Horizon closed but based upon the testimony of Brian Mueller it appears that Petitioner stopped attending therapy at Horizon prior to the facility closing. (Px. 1 p. 33).

Mr. Mueller testified Petitioner suffers from anxiety with trauma related symptoms after witnessing a work accident involving himself and a coworker. (Px.1, p. 10). Mr. Mueller diagnosed Petitioner with a post-traumatic stress disorder (PTSD) which, he opined, was related to Petitioner's work incident. (Px.1, pgs. 11, 16, 25). Mr. Mueller testified Petitioner's PTSD is the only condition he has ever treated Petitioner for. (Px.1, p. 12).

Mr. Mueller opined Petitioner's condition has not stabilized because he continues to need treatment. (Px.1, p.27). Mr. Mueller testified Petitioner still suffers from distressing memories of the accident, nightmares, night terrors and dissociative reactions from believing his coworker was almost killed. (Px.1, pgs. 9, 34). Mr. Mueller testified Petitioner continues to experience guilt over his coworker almost being killed. (Px.1, p. 35). Mr. Mueller testified Petitioner continues to experience distressing memories of the accident or flashbacks which cause him to relive the experience. (Px.1, p. 17). Mr. Mueller testified Petitioner should not quit working because the goal of treatment is to help him manage his emotions. (Px.1, p. 25). Mr. Mueller opined Petitioner's prognosis is good if he works with Petitioner more regularly. (Px.1, p. 20).

Mr. Mueller testified Petitioner's employment environment causes flare ups. (Px.1, p.24). Mr. Mueller testified it is difficult for Petitioner to avoid external stimuli or distressing memories because he still uses forklifts and lifts at work. (*Id.*). To address Petitioner's flare ups, Mr. Mueller recommends four weeks of EMDR processing sessions consisting of two visits per week. (Px.1, p. 22). Mr. Mueller testified EMDR is a technique for treating post-traumatic stress disorder which focuses upon lowering one's distressing emotions. (Px.1, pgs. 16-20). Mr. Mueller testified after the four weeks of EMDR treatment Petitioner's condition should be reassessed to determine whether his symptoms have dissipated. (*Id.*).

Testimony of Dr. Nancy Landre, the Section 12 Examiner

Respondent retained Dr. Landre pursuant to Section 12 of the Act. Dr. Landre is a psychologist who is broad certified in clinical neuropsychology. (Rx.2, p.7). Dr. Landre performed a records review and issued a report on May 31, 2022. (Rx.2, p. 9). On December 22, 2022, Dr. Landre examined Petitioner pursuant to Section 12 of the Act and she issued a report on January 17, 2023. (Rx.2, 12).

In her May 31, 2022 report, Dr. Landre indicated she reviewed various records including the Illinois Worker's Compensation Commission Application for Adjustment of Claim, US

Department of Labor Occupational Safety and Health Administration (OSHA) documents, medical records from Horizon and the evidence deposition of Brian Mueller. (Rx. 2, p. 15, Dep. Ex. #2).

In her records review report dated May 31, 2022, Dr. Landre opined she was unable to diagnose Petitioner because of problems related to his self-reporting, symptom inconsistencies, and “other factors” which did not support a PTSD diagnosis. (Rx. 2, Dep. Ex. #2). In the summary section of her records review, Dr. Landre wrote Petitioner claims to have PTSD and “*bone soft tissue*” injures after being fired by his employer on September 9, 2018 for poor performance and receiving at least two warnings for safety issues. (Rx.2, Dep. Ex. #2). In her records review, Dr. Landre also wrote Petitioner claims to be “*somehow traumatized while working on or near a lift with a coworker*” but that he provides varying accounts of his complaints when compared to the Application of Adjustment of Claim which states he suffered only “*bone and soft tissue*” injuries. (Rx.2, Dep. Ex. #2).

In her records review, Dr. Landre found it significant that OSHA dismissed the complaint for a lack of evidence. In her records review, Dr. Landre wrote that Petitioner not credible based, in part, upon her review of the OSHA report which stated the owner of the company denied knowledge of the incident, the ceiling height of the building was not 30 feet, and Petitioner was not removing an “evaporation unit”.⁶ (Rx. 2, P. 70, Dep. Ex. #2).

The Arbitrator notes the OSHA reports doesn’t reference Petitioner being fired or being issued written warnings for safety violations or who reported the incident to OSHA. Upon review of the OSHA report, the only individual who appears to have been interviewed was Joseph Hankin, the owner of the company, and that OSHA inspected Respondent’s property and not the location of the incident. (Rx. 5). At trial, Dr. Landre acknowledged also relying upon facts contained in a letter received from Respondent’s attorney.⁷ (Rx. 5).

⁶ Dr. Landre acknowledged relying upon several facts contained in the OSHA report which contradicted Petitioner’s claims such as: (1) The employer was not aware of the incident, (2) No citations were issued, (3) no hazards were found at Respondent’s location, (4) The height at Respondent’s location was not 30 feet, (5) Petitioner’s employment was terminated for failing to follow company rules, (7) No evaporation unit was located at Respondent’s facility, and (8) the OSHA complaint was dismissed for a lack of evidence. (Rx.2, Dep. Ex. #2).

⁷ The Arbitrator notes no evidence was presented at trial regarding the date Petitioner’s employment was terminated or that Petitioner previously received reprimands at work or that the onset of Petitioner’s symptoms occurred after the termination of his employment. During her deposition Dr. Landre acknowledged relying upon “other information” obtained from a letter received Respondent’s lawyer which she did not reference as a source reviewed in her reports. (Rx.2, p. 90).

Dr. Landre acknowledged relying on the OSHA reports and that she used to compare with the information obtained from Petitioner as one of the basis for her credibility opinions. (Rx.2, pgs. 68-70). Although Dr. Landre testified that she “*primarily*” based her opinions upon her work and the test results but she acknowledged she found the information in the OSHA report significant in assessing Petitioner’s credibility. (Rx.2, p. 73).

Dr. Landre performed a Section 12 examination on December 22, 2022. Dr. Landre testified to administering various tests and she determined Petitioner’s test scores pursuant to the test manuals which accompanied the tests. (Rx.2, p. 33). Dr. Landre opined Petitioner satisfied the published criteria for malingering since he failed multiple performance and symptoms validity tests. Dr. Landre further opined Petitioner has substantial external incentives to malingering based upon multiple inconsistencies between his presentation, the test results, and “other information” she reviewed. (Rx.2, pgs. 43-44, 47).

Dr. Landre testified the tests were scored according to the test manuals that came with the tests. (Rx.2, p. 33). Dr. Landre further testified the test booklets for some of the tests provide interpretive guidelines to use for determining test scores such as one’s age and education. (Rx.2, p. 33). Dr. Landre testified the interpretive guidelines identify various categories the scores could fall into such as mild to moderate impairment.⁸ (Rx.2, p. 34). Dr. Landre testified she also administered three performance validity tests along with other tests. Dr. Landre testified Petitioner passed some of the validity testing including the Dot Counting Test and the Stroop Color Word Test. (Rx.2, p. 104). Dr. Landre testified pursuant to professional guidelines if someone fails 2 or more performance validity tests, it indicates suboptimal performance or potential underperformance so those results cannot be interpreted since they are deemed not a valid representation of that person’s true abilities. (Rx.2, p. 40). Dr. Landre testified Petitioner’s scores

⁸ Dr. Landre acknowledged not providing copies of the interpretive scoring information regarding the tests she administered to Petitioner. (Rx.2, p. 51). Dr. Landre testified she was not allowed to release the raw test data to anyone other than another psychologist. (Id.). Dr. Landre testified she is prohibited from releasing the requested information to anyone other than another psychologist based upon a part of the Illinois Mental Health and Disability Act which refers to protecting test materials which prohibits the release of the information. (Rx.2, p.54). Dr. Landre acknowledged that she is not considered Petitioner’s mental health provider. (Rx.2, p. 52). Dr. Landre testified when she purchases tests that she does so with the understanding she can’t release the information to anyone other than an individual who has the same qualifications as hers. (Rx.2, p. 55).

for the MMPI-2 test and TSI-2 showed valid profiles but, she believed, Petitioner's tests reflected over-reporting⁹. (Rx.2, p. 46).

Dr. Landre testified the test scores by themselves do not mean anything unless they mean something in the context of "other information" which one needs to put together with the test scores. (Rx.2, p. 43). Dr. Landre acknowledged to considering the evidence deposition of the treating therapist, Brian Mueller, as well as an OSHA report and notes. (Rx.2, p. 68-69). Dr. Landre testified the employer not being aware of the incident, Petitioner being written up for safety violations before being fired played a role in forming her opinions. (Rx, 1, p. 80, Rx.2, p. 70).¹⁰ In her January 17, 2023 report, Dr. Landre wrote "*...there are significant discrepancies between his self-reporting and information contained in his medical records (i.e. initial records indicate that he characterized his injury as involving "bone and soft tissue" over his "whole body, with no indication of psychological injury; his report of injury is inconsistent with information contained in the OSHA inspection precipitated by his complaint).*" (Rx.2, Dep. Ex.#3, pg. 12). Dr. Landre admitted the discrepancy she referred to as being contained in Petitioner's medical records was actually obtained from the Illinois Workers' Compensation Commission Application for Adjustment of Claim. (Rx.2, p. 91).

Dr. Landre opined she was unable to diagnose Petitioner because of problems with his credibility regarding his injury-related symptoms and inconsistencies between his treatment notes, level of functioning, and "other factors" did not support a diagnosis of PTSD. (Rx.2, p. 18). However, Dr. Landre acknowledged Petitioner's description of the event could cause PTSD and, if true, would satisfy the criterion A of PTSD. (Rx.2, p. 98). Dr. Landre further acknowledged Petitioner's reported residual injury-related symptoms could be consistent with the elements for diagnosing PTSD. (Rx.2, p. 102).

The Arbitrator does not find Dr. Landre's opinions persuasive for various reasons including, but not limited to, her reliance upon information obtained from the OSHA report, Application of Adjustment of Claim, and letter from the attorney representing Respondent in addition to her failure to provide the requested information. The Arbitrator finds much of the

⁹ Dr. Landre testified she administered the Beck Anxiety Inventory test which showed Petitioner suffers from extreme anxiety and the Beck Depression Inventory Tests which showed Petitioner also suffers from severe depression. (Rx.2, p. 45).

¹⁰ Dr. Landre also acknowledged being advised that Petitioner's coworkers never reported that Petitioner sustained an injury which she obtained from the letter received from Respondent's attorney. (Rx.2, p.90).

information Dr. Landre contained in the OSHA report, Application of Adjustment of Claim and letter received from Respondent's attorney which she referred to as "other information" was irrelevant, inaccurate, and not supported by the evidence at trial.

The Arbitrator further finds Dr. Landre's assessments and opinions reflected a lack of impartiality in addition to the appearance of biasness. Dr. Landre made credibility assessments derived from unsubstantiated, inaccurate, and irrelevant information prior to interviewing Petitioner. Additionally, Dr. Landre did not alter her credibility assessments after interviewing Petitioner and, at that time, she knew or should have known some of the "other information" she relied upon was not substantiated nor accurate. Dr. Landre placed greater deference or weight upon "other information" than the information she obtained from Petitioner without articulating a legitimate justification for granting greater weight to the "other information".

As stated above, the Arbitrator finds the failure to provide the requested information undermines the persuasiveness of her opinions because the disclosure of the information would have allowed Petitioner to confirm adherence to test administration and interpretation standards. Petitioner was sent to Dr. Landre for an independent psychological evaluation pursuant to Section 12 of the Act. The purpose of Section 12 is served if the physician adheres to proper administrative and interpretation standards. Biasness of one who administers a test or interprets test results undermines the reliability of the tests as well as the purpose of Section 12 of the Act.

If substantial external incentives could cause one to be defined as a malinger than substantial financial incentives could cause one to be found bias. In this case, Dr. Landre was paid between \$4,500.00-\$5,000.00 for conducting the testing and issuing her second report. Dr. Landre also was paid \$2,100.00 for her deposition. The amount she earned for the records review is unknown. (Rx.2, pgs. 57-58). The Arbitrator finds Dr. Landre's reliance upon "other information" to assess Petitioner's credibility and the significant weight allocated to "other information" combined with the significant financial incentives derived from performing Section 12 examinations and the refusal to provide requested information, which could have shown adherence to the administrative and interpretation standard, also undermines the persuasiveness of her opinions.

Petitioner's Testimony Regarding is Current Condition

As to his current condition, Petitioner testified he continues to experience issues related to the use of manlift or forklift. (T.109, 118). Petitioner still works as a pipefitter but he tries to

accept jobs which do not require the use of a forklift or manlift. (T.109-110). When Petitioner uses a manlift he experiences anxiety causing him to feel nervous and shaky. (T.112). Petitioner testified prior to the work incident he did not experience issues with manlifts, forklifts or performing elevated work. (T.111).

Petitioner testified he continues to experience nightmares about the work incident and killing Tony. (T.114). Petitioner testified the nightmares adversely impacts his ability to sleep. (T.117). Petitioner testified the frequency of the nightmares depends upon his work activities. (T.116). Petitioner testified some work activities triggers his anxiety and the frequency of his nightmares depends on his work activities. (*Id.*) Petitioner testified the nightmares could be as often as twice a week or as little as once every two weeks. (T.116). Petitioner testified he also experienced depression from this work incident but that condition resolved with therapy. (T.118).

The Arbitrator finds Petitioner's testimony to be credible.

Conclusions of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill. App 706, 714 (Ill. App. 5th Dist. 1992).

With Respect to Issue (C) Did an Accident Occur that arose out of and in the course of Petitioner's Employment by Respondent, the Arbitrator finds as follows:

The Illinois Supreme Court set out the requirements for a "mental-mental" claim, holding that in the absence of physical trauma or injury, a psychological injury can be compensable in cases where the claimant suffered a sudden, severe emotional shock traceable to a definite time, place, and cause. *Pathfinder Co. v. Industrial Commission*, 62 Ill. 2d. 556, 563 (1976). If a claimant shows that he or she suffered a sudden severe emotional shock which caused a psychological injury, his or her claim may be compensable even if the resulting psychological injury did not manifest itself until some time after the shock. *Chicago Transit Authority v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120253WC, Par. 20, 989 N.E.2d 608. The issue in this case is whether Petitioner suffered a sudden, severe emotional shock as a result of the incident which occurred at work on September 5, 2018 which produced a psychological injury. See *Moran v. Illinois Workers' Compensation Comm'n*, 2016 IL App. (1st) 151366WC. To show that a condition is traceable to a definite time, place and cause is to determine whether the condition

was brought on by a single, work-related event rather than the gradual deterioration of a claimant's mental processes. (*Id.*).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that he sustained an accidental injury which arose out of and in the course of his employment, as set forth more fully below.

The Arbitrator finds the facts in this case similar to the facts in *Moran v. Illinois Workers' Compensation Comm'n.*, 2016 IL App. (1st) 151366WC. In *Moran* the claimant, a fire fighter with the rank of lieutenant, instructed a crew to enter a house fire resulting in the death of a firefighter and injuries to another firefighter. The fire occurred on March 30, 2010 but the claimant did not start treatment until April 23, 2010. (*Id.*). In *Moran*, claimant's doctor diagnosed PTSD caused by the trauma of the March 30, 2010 fire. (*Id.*). The claimant's trauma was due to the feelings of guilt associated with fire and the feeling of responsibility for the death of the firefighter. (*Id.*). In *Moran* the Court noted the claimant's psychological injury was not immediately apparent but the claimant suffered a sudden, severe emotional shock that caused a psychological injury manifesting some time after the shock. The Court found the claimant's psychological injury stemmed from a single, traumatic event. (*Id.*).

Similar to the claimant in *Moran*, Petitioner was diagnosed with PTSD caused by guilt associated with almost killing a coworker. (Px.1, pgs. 9, 34). Petitioner's therapist testified Petitioner suffers distressing memories of the accident, distressing dreams, nightmares, night terrors and dissociative reactions from believing his coworker was almost killed. (Px.1, p. 35). In the instant case the work incident occurred on September 5, 2018 and Petitioner's first date of treatment was September 29, 2018 which is a similar period of time between the incident and the start of treatment in *Moran*. The Arbitrator finds Petitioner's psychological injury also stemmed from a single, traumatic event which occurred at work on September 5, 2018.

With Respect to Issue (F) Whether Petitioner's current condition of ill-being is causally related to his injury the Arbitrator Finds as follows:

The Arbitrator incorporates the Conclusions of Law in Section C into this Section. It is well established 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. Illinois Workers' Compensation Commission*, 93 Ill. 2d. 59, 63-64 (1982). 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).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that his current condition of ill-being is causally connected to his injury, as set forth more fully below.

In the instant case, Petitioner had no psychological diagnosis prior to the accident. Mr. Mueller testified Petitioner suffers from anxiety with trauma related symptoms after witnessing a work accident involving himself and a coworker. (Px.1, p. 10). Mr. Mueller diagnosed Petitioner with a PTSD which, he opined, was related to Petitioner's work incident. (Px.1, pgs. 11, 16, 25). The Arbitrator finds the opinions of the therapist persuasive and consistent with Petitioner's trial testimony. For the reasons stated above, the Arbitrator does not find the opinions of the Section 12 examiner, Dr. Landre, persuasive. The Arbitrator finds Petitioner's prior good health, coupled with the instant accident and his subsequent and immediate psychological disability, supports a finding of causal connection between the September 5, 2018 incident and his current psychological condition under the chain of events theory. See also *Wood v. CTA*, 23IWCC0060 (Feb. 7, 2023).

With Respect to Issue (J) Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator Finds as follows:

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

Petitioner initially treated at Lighthouse Counseling Service (Lighthouse) with therapist Brian Mueller. Petitioner treated at Lighthouse from September 29, 2018 through December 14, 2018. (T.130, 132). Petitioner testified Lighthouse closed so he sought treatment at Horizon with the same therapist who treated him at Lighthouse, Brian Mueller. (T.103).

The parties stipulated that all the medical bills were paid by Blue Cross Blue Shield (BCBS), Petitioner's private health care provider. (T.20, 133). Petitioner submitted into evidence the bills and records from Horizon. (Px. 2). No bills or records were submitted into evidence from Lighthouse. It appears the parties were unable to obtain the Lighthouse bills and records because that facility closed. Respondent submitted into evidence records from BCBS which

contain a list of the bills paid by BCBS for both Brian Mueller (Horizon) and Lighthouse which include CPT codes. (Rx.1, 1A).

Petitioner seeks payment for the amounts BCBS paid to both Lighthouse and to Brian Mueller (Horizon) in addition to the amounts appearing as the patient's responsibility listed on the BCBS ledgers. (T.21-22, Rx. 1). Regarding the absence of the Lighthouse records and bills, Petitioner argues mental health treatment should be treated differently than regular medical records and bills since the Mental Health Disabilities Act excuses counselors from retaining or creating contemporaneous records for each visit. (T.26). In this case, there is no evidence that the Lighthouse records and bills could not be obtained based upon the Mental Health Disabilities Act. In the instant case, the Lighthouse bills and records were not available because the entity ceased to exist. Respondent contends nothing should be awarded regarding the Lighthouse treatment because without bills or records the requirements of Section 8.2(a) of the Act could not be met and the fee schedule amounts can't be determined. (T.28, 29).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that Respondent is liable to pay for the medical services provided by Brian Mueller (Horizon). As such, Respondent shall pay the lesser amount of either the negotiated rates paid by BCBS or the services provided by Brian Muller (Horizon) identified in Px. 2 pursuant to Sections 8(a) of the Act subject to the fee schedule in Section 8.2 of the Act. In the event Respondent elects to be liable for the sums paid by BCBS then Respondent shall hold Petitioner harmless for those services provided by Brian Mueller (Horizon) paid by BCBS.

Regarding the medical bills paid by BCBS to Lighthouse, the Arbitrator finds those services were necessary and related to Petitioner's September 5, 2018 work incident based upon the testimony of Petitioner, Brian Mueller, who treated Petitioner at both facilities, and the CPT codes. Based upon the BCBS records, the BCBS negotiated rate and CPT codes are known. As such, the Arbitrator finds Respondent shall hold Petitioner harmless for amounts claimed due and owing from BCBS for treatment Petitioner received at Lighthouse from September 19, 2018 through December 14, 2018, as identified in Rx.1 and 1A, not to exceed of the lesser amount of either the negotiated rate or fee schedule amount as provided in Sections 8(a) and Section 8.2 of the Act.

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that he is entitled to be reimbursed the sum of \$2,817.92 which represents the payments he made to Brian

Mueller (Horizon). The statement and bills generated by Brian Mueller (Horizon) reflect payments Petitioner made using his credit card. (Px.2). As such, Respondent shall pay Petitioner the sum of \$2,817.92. A breakdown of the amounts Petitioner paid to Brian Mueller (Horizon) via credit care is as follows:

Date	Amount	Date	Amount
8/27/20	\$304.22	6/06/22	\$200.00
9/17/20	144.71	7/05/22	259.75
10/23/20	68.46	7/08/22	85.37
11/12/20	45.64	8/18/22	67.56
12/15/20	45.64	10/08/22	67.56
1/29/21	22.82	11/18/22	45.04
2/24/21	152.11	12/05/22	22.52
3/24/21	304.22	3/06/23	150.14
5/28/21	22.82	4/07/23	150.15
6/29/21	45.64	5/04/23	150.14
9/27/21	90.12	6/28/23	110.42
1/03/22	112.65		\$1,308.65
4/19/22	150.22		1,509.27
	\$1,509.27	Total:	\$2,817.92

With Respect to Issue (K) Is Petitioner entitled to any prospective medical care, the Arbitrator Finds as follows:

The Arbitrator incorporates the Conclusions of Law in Sections C, F and J into this Section. Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical and hospital services “thereafter incurred” that are reasonably required to cure or relieve the effects of injury. Procedures or treatment that have been prescribed by a medical service provider are “incurred” within the meaning of the statute, even if they have not yet been paid. *Plantation Mfg. Co. v. Industrial Comm’n*, 294 Ill.App.3d 705, 710 (Ill. App. 2nd Dist. 1997).

The Arbitrator finds Petitioner has proven by the preponderance of the evidence that he is entitled to prospective medical care. Petitioner’s therapist, Mr. Mueller, testified Petitioner’s employment environment continues to cause flare ups. (Px.1, p.24). To address Petitioner’s flare ups, Mr. Mueller recommends four weeks of EMDR processing sessions consisting of two visits per week. (Px.1, p. 22). Mr. Mueller testified EMDR is a technique for treating post-traumatic stress disorder which focuses upon lowering Petitioner’s distressing emotions. (Px.1, pgs. 16-20). Mr. Mueller testified after the four weeks of EMDR treatment Petitioner’s condition should be reassessed to determine whether his symptoms have dissipated. (*Id.*). As such, Respondent shall authorize and pay for prospective treatment recommended by Brian Muller, consisting of two

visits per week for four weeks of EMDR treatment as well as an additional session to reassess Petitioner's symptoms, pursuant to Sections 8.2 and 8(a) of the Act.

With Respect to Issue (M) Should penalties or fees be imposed upon Respondent, the Arbitrator Finds as follows:

Petitioner filed a petition for penalties but he requests to reserve that issue until the hearing on permanency. As such, the determination of penalties is stayed and/or reserved until the hearing on permanency.

By: /s/ Frank J. Soto
Arbitrator

August 21, 2024
Date

August 22, 2024

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC020289
Case Name	Julie Day v. ADM- Archer Daniels-Midland Company
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0397
Number of Pages of Decision	20
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Matthew McCue
Respondent Attorney	Jessica Bell, Ashley Broadstone

DATE FILED: 9/24/2025

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JULIE DAY,

Petitioner,

vs.

NO: 21 WC 020289

ADM-ARCHER DANIELS MIDLAND CO.,

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, notice, causal connection, medical, TTD, and nature and extent of disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Conclusions of Law regarding the reasonableness and necessity of medical expenses in the fifth paragraph on page 15, and strikes "the Medical Fee Schedule" and replaces it with "Sections 8(a) and 8.2 of the Act."

The Commission further modifies the Order section of the Decision regarding the awarded medical expenses, striking "the Medical Fee Schedule" and replacing it with "Sections 8(a) and 8.2 of the Act."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$672.75 per week for a period of 10-2/7 weeks, commencing October 25, 2021 through January 4, 2022, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$605.47 per week for a period of 66.3 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused 20% loss of use of the right hand and 10% loss of use of the right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the medical expenses related to the reasonable and necessary treatment of Petitioner's right wrist ulnar impaction resulting in osteotomy of the ulna, TFCC tear, and missing cartilage off the end of the ulna, set forth in Petitioner's Exhibit #6, with the exception of the unrelated charges of Dr. Sarah E. Winter, as provided under §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to a credit for all amounts paid, if any, by its group health carrier, pursuant to §8(j) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$50,800.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 24, 2025

KAD/swj
O90925
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s/ Kathryn A. Doerries
Kathryn A. Doerries

/s/ Amylee H. Simonovich
Amylee H. Simonovich

/s/ Stephen J. Mathis
Stephen J. Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC020289
Case Name	Julie Day v. ADM- Archer Daniels-Midland Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Dennis OBrien, Arbitrator

Petitioner Attorney	Matthew McCue
Respondent Attorney	Jessica Bell

DATE FILED: 7/11/2024

/s/ Dennis OBrien, Arbitrator
Signature

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

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

JULIE DAY

Employee/Petitioner

v.

ADM – ARCHER DANIELS MIDLAND CO.

Employer/Respondent

Case # **21** WC **020289**

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 **April 29, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **June 9, 2021**, Respondent *was* operating under and subject to the provisions of the Act.

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

In the year preceding the injury, Petitioner earned **\$52,474.24**; the average weekly wage was **\$1,009.12**.

On the date of accident, Petitioner was **54** years of age, *married* with **no** dependent children.

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

Respondent shall be given a credit of **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$7,015.80** for other benefits, for a total credit of **\$7,015.80**.

Respondent is entitled to a credit of **all amounts actually paid by its group health insurer** under Section 8(j) of the Act.

ORDER

Petitioner suffered an accident on June 9, 2021, which arose out of and in the course of his employment by Respondent.

Petitioner's medical condition, right wrist ulnar impaction, resulting in osteotomy of ulna, TFCC tear, and missing cartilage off the end of the ulna bone, is causally related to the accident of June 9, 2021.

Petitioner gave notice of the accident of June 9, 2021 as soon as was practicable, and within the 45 days after the accident.

Petitioner was temporarily totally disabled as a result of the accident from October 25, 2021 through January 4, 2022, a period of 10 2/7 weeks.

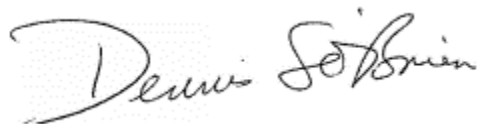
All of the bills introduced into evidence in Petitioner's Exhibit 6 are related to Petitioner's right wrist ulnar impaction, resulting in osteotomy of ulna, TFCC tear, and missing cartilage off the end of the ulna bone injuries and treatment, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident with the exception of the charges of Dr. Sarah E. Winter. Said bills are to be paid pursuant to the Medical Fee Schedule.

Respondent is entitled to credit for all amounts paid, if any, by its group health carrier, pursuant to Section 8(j) of the Act.

Petitioner sustained permanent partial disability to the extent of 20% loss of use of the right hand and 10% loss of use of the right arm, pursuant to §8(e) of the Act.

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

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



Signature of Arbitrator

July 11, 2024

Julie Day vs. ADM – Archer Daniels Midland Co. 21 WC 020289

FINDINGS OF FACT:

TESTIMONY AT ARBITRATION

Petitioner

Petitioner testified she was employed at Archer Midland Daniels Co. (ADM) since February of 2017. Petitioner was hired in the Grain Settlement department and performed in that position for a little over a year, at which time she transferred to a Barge Settlement position, which she performed for four months. In 2019, Petitioner transferred to Customer Service Representative doing documentation (CSR), and was in that position on her date of accident, June 9, 2021. (Tr. pp. 18-20)

Petitioner testified that her CSR job duties require her to create certifications for overseas customers, which required creating and sending the material in physical form via the mail, approximately 20 pages each. Petitioner testified that more than half of her workday involved data entry to populate the documents for these certifications. She said she used her right arm to maneuver the mouse across multiple computer screens in order to verify information and populate the certification documents with information including container numbers, insuring that USDA weight and grades matched, and that bill of lading on the containers matched what was on the vessels. The mouse had to move from one screen to another in a “sawing motion,” often copying from one screen and pasting to the other. Petitioner testified that she used her whole arm slightly below the elbow using the forearm, wrist, and hand. Petitioner also testified that she would move her wrist all the way right and left using her full range of motion while using the mouse. She testified that her desk at ADM was about five-and-a-half feet long by two-and-a-half feet wide, and the table she used at home was smaller. (Tr. pp. 20-25)

Petitioner said her regular hours, when hired as a CSR, were 8:00 a.m. to 4:30 p.m. daily. Petitioner testified that her work hours increased in October of 2020 when another employee left and her employer assigned their work to Petitioner. Petitioner testified that she picked up eighty to ninety new certification folders, and she had to work overtime, as shown by a wage statement, with the percentage of her day involving mouse work and data entry increasing with the increased workload. (Tr. pp. 26-28; PX 7)

Respondent noted that Respondent Exhibit 6 was not an accurate description of the job she was performing, parts of it were, but other portions were not part of her job. (Tr. Pp.29,30)

Petitioner testified that her work environment changed at the start of the Covid-19 pandemic in March of 2020. While she had previously worked exclusively on-site at ADM in Clinton, she was then exclusively to work from her home. Petitioner continued to perform the duties of a CSR, including the creation of physical certification documents and the data entry associated with populating those documents, with UPS coming to her home to drop off or pick up documents. She said Respondent did not provide her with a desk for her home, that her workspace at home was a small kitchen table about four-and-a-half feet long by two-and-a-half feet wide. Her workspace provided her with less space, and contained a makeshift organization for files and folders, two computer screens, a keyboard, mouse, and chair. Petitioner said her work hours continued to increase, and her working hours expanded to include early morning and late evening hours, as needed to communicate with overseas customers, and due to the coworker’s having left. (Tr. pp. 26,31-34)

Petitioner testified that she first started to have issues with her right arm and hand in May of 2020. She said she had no prior issues with her right hand or arm. She was experiencing coldness, tingling, wrist pain, and pain going up into her arm. She testified that she went to Bloomington Primary Care on May 28, 2020, at which time she was not given a diagnosis. Petitioner was instructed by the provider at that facility to get an ergonomically correct mouse and wrist pad, and she said she told her supervisors, who provided that equipment. Petitioner testified that she did not seek more treatment for the numbness and tingling, and that it did not resolve over the next year-and-a-half. She said she continued to have numbness and tingling as of the date of arbitration. (Tr. pp.34-36)

Petitioner testified that while she did not seek additional medical treatment before June of 2021, she began to have additional issues with her right arm in April of 2021, including increased pain to the outside portion of her right hand and arm, causing her to experience pain on a daily basis. Petitioner testified that she reported her issues to her supervisor and filed a work comp claim with Respondent, as she thought she had carpal tunnel. She identified Petitioner Exhibit 8 as a set of emails between herself and several of her supervisors, noting she was seeking treatment for her right hand and arm. (Tr. pp. 36-38; PX 8)

Petitioner testified that she presented at Orthopedics of Illinois on June 9, 2021, being seen by PA Rudicil, for Dr. Kolb, giving him a history of her year of pain and numbness in the right arm and hand, and of its progressively worsening. Petitioner said she was evaluated for a possible TFCC tear and right cubital tunnel syndrome. Petitioner testified that this was the first time she had knowledge of a diagnosis and a belief it was work related. She said she got an MRI on that date and had an EMG test on June 28, 2021. She said she saw PA Rudicil again on June 30, 2021, the EMG and MRI were reviewed, and conservative measures were recommended for a TFCC tear. She said she was then referred to Dr. Fernandez at Orthopedics at Rush. (Tr. pp. 38-42)

Petitioner said she first saw Dr. Fernandez on August 17, 2021, and, after examining her, she was diagnosed by Dr. Fernandez with ulnar impaction and a TFCC tear. She said Dr. Fernandez performed surgery on October 25, 2021, and was taken off work by him at that time. Petitioner said she then underwent physical therapy at Orthopedics of Illinois, attended follow up visits with Dr. Fernandez on November 30, 2021, and was released without restrictions by Dr. Fernandez on January 4, 2022, though she was told the full recovery process would take six to nine months. Petitioner testified that she asked to be released to full duty because she felt like she was getting pressure from short-term disability to return to work, but that she did think she could return to her job at that time. Petitioner testified that she received short-term disability while she was off work, deposited directly into her accounts like her regular ADM paycheck. (Tr. pp. 42-45)

Petitioner testified that she continued to have some right-sided hand and arm pain when she returned to work, and she continued to wear a brace for four to six more weeks. Petitioner said she continued to work as a CSR at ADM until she switched to another position. Petitioner said she started work with Top Flight Grain company in September of 2022. (Tr. Pp. 45-47)

Petitioner testified that she is able to perform her daily work and personal life tasks. Petitioner still has a surgical scar from her wrist up to her elbow on the pinky side of her right arm, as well as a plate and screws in the arm. Petitioner has not had any additional medical treatment since January 4, 2022 for this condition (Tr. pp. 47,48)

On cross examination, Petitioner testified to more detail on her job duties with ADM. Petitioner testified that her pre-CSR jobs did not require data entry but did require the use of a computer and mouse. Petitioner said that in the barge settlement position, she inputs data, prints out documents, organizes files, compares forms, and takes calls and emails with customer and other departments. Petitioner testified that Respondent's exhibit 6 was a description of the carbohydrates position, and Petitioner noted she had a copy of her actual job description, the CSR job description, which was then admitted as Respondent's exhibit 8. Petitioner testified that she did not provide the job description to Dr. Fernandez but described to him the computer-related tasks she performed. (Tr. pp. 48-54)

Petitioner testified that she set up her workstation at home during March 2020, and had control over her workspace. Petitioner agreed that she could have requested her employer provide equipment, but did not ask for anything besides the vertical mouse and wrist pad. She testified that her supervisor came to her house once to deliver copy paper, but she did not recall if the supervisor saw Petitioner's workspace. Petitioner testified that she returned to the office in person around July of 2021. (Tr. pp. 54-56)

Petitioner testified that she did not know what was causing the coldness and tingling in her wrist in May of 2020. Petitioner said her wrist pain was slight in May of 2020, and did not get significantly worse until later. Petitioner testified that she did tell her primary care physician on May 28, 2020, that she thought computer related work tasks were causing her numbness and tingling. She said she did not do computer-related tasks outside of her work duties for Respondent. Petitioner testified that she got her vertical mouse and wrist-pad within a week of her May 2020 visit. Petitioner testified that her symptoms started to get significantly worse in April of 2021, but she did not seek treatment right away and bought an over-the-counter wrist brace. (Tr. pp. 57-60)

Petitioner was presented with a document she created and testified she provided that letter to her employer in June 2021. Petitioner testified that she did not remember if this was submitted to the work comp insurance company or whether she was requested to write up a summary of her medical events to date. Petitioner said she sent the letter with the email contained in Petitioner Exhibit 8, to her supervisor, Scott, at ADM, as she thought he handled workers' compensation claims. (Tr. pp. 60,61,63-65; PX 7; PX 8)

Petitioner testified that she still has coldness and tingling in her right hand, but no physician has told her that it related to the TFCC tear or other conditions treated by Dr. Fernandez. Petitioner testified that she mows and cooks occasionally, and performs other daily tasks like curling her hair, flossing, brushing teeth, and cutting peaches. Petitioner testified that doing those tasks caused pain between June 2021 and the date of her surgery. Petitioner clarified that she did have slight relief from June 2021 to her surgery date while using a splint, but her pain did not resolve without surgery, that she was told that to get relief she would have to have the tear surgically repaired. (Tr. pp. 65-69)

On re-direct, Petitioner testified that her surgery was to repair her tears and shorten her ulnar bone. Petitioner said she had a stand-up desk she could use when she was at ADM, but did not have one at home, nor was she offered such a desk by Respondent when they were advised she had started treatment. Petitioner said she would never do her personal tasks for more than ten minutes at a time with breaks once the pain started. (Tr. pp. 69-71)

On re-cross, Petitioner said she never asked Respondent for a standup desk, and she did not believe a standup desk would have any bearing on her right-handed complaints. (Tr. P.72)

On re-direct examination Petitioner said she thinks a larger desk would have had an effect on her arm. (Tr. P.72,73)

On re-cross, Petitioner said she never asked Respondent for a larger desk. (Tr. 73)

MEDICAL EVIDENCE

Petitioner first treatment was by Dr. Cunningham, on May 28, 2020. Petitioner presented for complaints of right handed cold sensations and occasional tingling. She advised there had been no injury, and she was working from home. Dr. Cunnig felt the diagnosis could be radial tunnel syndrome, and recommended she get improved ergonomics at home, and a nerve conduction study be conducted if no improvement or worsening of symptoms. (PX 4, pp. 2,3)

Petitioner was seen by Dr. Kolb's Physician Assistant (PA), PA Rudicil, on June 9, 2021. She was seen for right arm pain, saying she had pain, numbness, and tingling in the arm for a least a year, which had progressively worsened. Most of the pain was localized to the ulnar aspect of her hand and wrist, and at times it would radiate into the elbow. Petitioner told him that her work-related activities desk work was an aggravating factor. She advised him that she had difficulty with fine motor movements. X-rays were taken and reviewed and were negative. He found she had tenderness in the TFCC region and proximally through the distal ulna. PA Rudicil's assessment was a right TFCC tear with possible cubital tunnel syndrome of the right side. An MRI and EMG were ordered. (PX 3, pp. 3,4)

An MRI was performed on June 9, 2021, and showed a 3mm communicating defect or tear involving the inner and middle third of the TFC, as well as post-traumatic capsulitis or capsulosisynovitis involving the radioulnar joint, radiocarpal, and, to a lesser degree, the mid carpal joint. (PX 3, p. 5)

Petitioner underwent EMG/NCV testing by Dr. Riskin on June 28, 2021, and with the exception of decreased amplitudes of the median nerve responses, which he could not explain, the test was normal, with no evidence of right cubital tunnel syndrome or other ulnar nerve dysfunction. (PX 5, pp. 4-6)

On June 30, 2021, Petitioner was again seen by PA Rudicil. He confirmed the MRI finding of a tear to the TFCC region. Petitioner had been using an EXOS wrist brace for a couple weeks, without relief. The MRI and EMG were reviewed, and physical therapy was ordered. He also noted the EMG results which was essentially normal, with no indication of median nerve neuropathy or cubital tunnel. PA Rudicil noted on this date that, "We do feel that her current condition is work-related as that does appear to be the primary aggravating factor for her." It was noted that if conservative measures did not help a referral to Dr. Fernandez would be considered. (PX 3, pp. 6,7)

Petitioner underwent therapy at Orthopedics of Illinois from July 13, 2021 to July 19, 2021. On that last date the therapist wrote that Petitioner reported that her right wrist remained stiff, the pain was the same, 6/10, and she was having difficulty typing, writing, and turning pages at work. (PX 3, pp. 8-18)

Petitioner was seen by Nurse Practitioner (NP) Kieser on July 28, 2021. Petitioner reported therapy had helped to a small degree. Petitioner outlined personal activities that cause pain for her, including using a mouse, flossing, putting makeup on, and holding a magazine. Petitioner's physical examination continued to show right wrist TFCC tenderness. Petitioner was referred to Dr. Fernandez at Rush, instructed to hold off on further therapy, but continue doing home exercises. (PX 3, p. 19)

Petitioner was first seen by Dr. Fernandez on August 17, 2021, for evaluation of right wrist pain that was ongoing from May 2021. Dr. Fernandez reviewed the MRI and noted that it showed ulnar impaction of the right wrist, which was consistent with her pain along the ulnar aspect of the wrist. Petitioner denied known injuries prior to the onset of pain, but did note that she did a lot of typing at work and attributed her symptoms to that activity. Physical examination revealed tenderness to palpation along the right wrist at the ulnar fovea, and sensory testing was normal, as was Petitioner's range of motion of the bilateral wrists. Dr. Fernandez's diagnosis was right wrist ulnar impaction, confirmed by MRI. He noted Petitioner's options were conservative treatment, a steroid TFCC injection, and an arthroscopy with ulnar shortening osteotomy and TFCC repair. Petitioner opted for the injection, and it was performed at that time. Petitioner was advised it would take four weeks for the injection to have its full effect. Petitioner was provided with a custom fabricated wrist immobilizer brace on this visit. (PX 2, pp. 5-13, 11-13)

On October 25, 2021, Dr. Fernandez performed a right wrist arthroscopy with debridement of the central triangular fibrocartilage, lunotriquetral ligament and the chondral loss lunate and triquetrum. He then performed a right wrist ulnar shortening osteotomy for ulnar impaction, with a plate and screw placed to close down the osteotomy. Petitioner was fitted for a sling. (PX 2, pp. 14-16, 19-21)

Petitioner returned to see Dr. Fernandez on November 9, 2021, with a six-out-of-ten pain level. X-rays were taken and showed well fixated hardware. Petitioner was instructed to not lift more than three or four pounds with the right arm, was given another brace, and was instructed to start therapy to work on range of motion (PX 2, pp. 22-28)

Petitioner received physical therapy at Orthopedics of Illinois from November 15, 2021, through December 30, 2021. (PX 3, pp. 20-68)

Petitioner was again seen by Dr. Fernandez on November 30, 2021, noting some pain along the ulnar incision at the hardware, with continued stiffness to wrist extension and flexion. It was noted that she was undergoing therapy for range of motion, but not strengthening. She was instructed to continue her physical therapy. (PX 2, pp. 32-35)

Petitioner followed up for her final visit with Dr. Fernandez on January 4, 2022. She was doing well and improving in therapy, but had not yet started strengthening exercises. Dr. Fernandez released Petitioner to return to work at her discretion and noted a six-to-nine-month recovery in terms of range of motion and strengthening. Petitioner was instructed to return as needed (PX 2, pp. 40-43)

The Arbitrator notes that the medical records introduced by Respondent are essentially identical to the medical evidence provided by Petitioner. (RX 1, 2, & 3)

DEPOSITION TESTIMONY OF DR. JOHN FERNANDEZ

Dr. John Fernandez was deposed as a witness for Petitioner on October 27, 2023. He testified that he is a board-certified orthopedic surgeon with a specialty in hand, wrist, and elbow treatments. He alternates his work-days between performing surgery and meeting with patients, averaging 10-15 surgeries on a typical day (Id. at 5-6). He is an assistant professor of orthopedics at Rush University Medical Center. He said he performs independent medical examinations averaging about five a week at the request of both respondent and petitioner attorneys. (PX 1, pp. 5-7; Dep X 1)

Dr. Fernandez testified to the medical history consistent with the Medical Evidence while providing context for his opinions and records. He said ulnar impaction occurs when the ulna bone impacts upon the other wrist bones through the cartilage. Dr. Fernandez noted that in most individuals the ulna bone is a little bit shorter than the radius, with the cartilage of the triangular fibrocartilage making up the difference. He testified that when the ulna is longer than the radius, the cartilage tends to be a bit thinner than the average person, which can lead to ulnar impaction via different types of work activities, traumatic factors, recreational activities. He estimated that over 100 million people have the condition of an unusually long ulna, but far fewer experience ulnar impaction, less than five percent of those individuals. (PX 1, pp.7-13, 31-33)

Dr. Fernandez testified that on October 25, 2021, he performed an arthroscopic procedure on Petitioner consistent with the operative report findings. Dr. Fernandez noted that he identified the TFCC tear and noted the missing cartilage off the end of the ulna bone. He said the cartilage cannot be replaced, but is cleaned out and the wrist typically does well without a cartilage replacement. Dr. Fernandez testified that the rest of the wrist was in excellent condition. He said that during the surgery he also shortened the ulna bone by an eighth of an inch and held it in position using a small titanium plate and screws. He said the shortening of the bone was done to take the pressure off that side of the wrist. (PX 1, pp.16-21)

Dr. Fernandez noted that he would have had Petitioner on restrictions from her date of surgery through her release on January 4, 2022, though his notes did not reflect specific off-work notes given at that time. He said Petitioner would have been able to do minimal or sedentary work, such as getting dressed or feeding herself, or writing or typing sporadically throughout the day, 15 or 20 minutes at a time, with a two hour daily maximum. He noted that occasional patients will need the plates removed and complications from lack of cartilage can require follow up visits. (PX 1, pp.24,26,27,57-63)

Dr. Fernandez testified that he authored a narrative report which was presented as deposition exhibit 3. Dr. Fernandez opined that her work activities, especially her movement with the computer mouse, was causative or an aggravating factor leading to her condition. He noted that the movement of the wrist from side-to-side can cause ulnar impaction. Dr. Fernandez opined that there was no better explanation for why Petitioner developed her symptoms other than her work-related activities. Dr. Fernandez noted no recreational activities or hobbies that could have contributed, and that she had no pre-existing markers to suggest that this occurred naturally over time. Dr. Fernandez clarified that he was using the *Dictionary of Occupational Titles* definitions for “frequent” as more than one-third of the work cycle and “Constant” as more than two thirds of the work cycle. For ulnar impaction, Dr. Fernandez indicated that he would expect an activity that was frequent to be contributory to ulnar impaction (PX 1, pp.2828-31, 33-35, 48-50)

On Cross-Examination, Dr. Fernandez confirmed that Petitioner's long ulna bone was not caused by Petitioner's work activities, it was preexistent, and would have existed likely for several decades. He noted that this is typically diagnosed between the ages of 35-55, with the impaction from repetitive activities typically occurs in middle aged groups because it takes some time to develop, but it doesn't just occur from wear and tear which is why we don't see it in elderly populations. (PX 1, pp. 36-39)

Dr. Fernandez noted that ulnar impaction and the TFCC tears are not the same, but do tend to develop as part of the same process. Dr. Fernandez testified that force is not required for ulnar impaction, though it can speed up the process and is one of the potential risk factors for Petitioner's condition. He said impaction can occur with low repetition and high force, and lead to TFCC tearing, and vice versa. He also noted gripping and certain motions can contribute to ulnar impaction. (PX 1, pp. 40-42)

Dr. Fernandez said he believed Petitioner's work duties included her working ten-hour days with significant data entry, keyboarding, and computer mouse movements. He agreed that he did not reference mousing or keyboarding directly in his narrative report. He testified that he did not view Petitioner's work setup, computer station, type of mouse, keyboard, phone, or other equipment. He testified that Petitioner did not show her exactly how she moved the mouse or positioned her wrist during her work activities. He testified that he was not aware of the variety of tasks in a given workday or total amount of each activity per total minutes. He testified that some force is used for everything, but he did not know the exact force used for mouse work. (PX 1, pp. 42,43,45-47)

Dr. Fernandez said he did not believe Petitioner had any contributory hobbies. (PX 1, pp. 48-55)

DEPOSITION TESTIMONY OF DR. MICHAEL BIRMAN

Dr. Michael Birman was deposed as a witness for Petitioner on January 16, 2024. Dr. Birman is a board-certified orthopedic surgeon with a subspecialty in hand surgery. He alternates his workdays between performing surgery and meeting with patients. He testified that he conducts about one medical records review per month (RX 5, pp. 5-7)

Dr. Birman testified that he conducted a records review at the request of Respondent on Petitioner's treatment records. The report was included in Respondent's exhibits as Respondent's Exhibit 4. Dr. Birman reviewed the customer Support Representative Carbohydrates job description provided by Respondent. He also reviewed reports and imaging for the right wrist MRI, primary care records, the EMG report, and orthopedic records. He also reviewed the document created by Petitioner at request of the Respondent regarding her treatment course (RX 5, pp. 8-10, 12; RX 4; RX 7)

Dr. Birman discussed his review of the records, agreeing with Dr. Fernandez that that the TFCC tear and ulnocarpal impaction are a part of the same pathology Unlike Dr. Fernandez, Dr. Birman described ulnocarpal impaction as a degenerative or arthritic condition that progresses naturally over time. He agreed that having a long ulna is a congenital developmental phenomenon, and that not everyone with ulna carpal impaction becomes symptomatic. For contributory risk factors, Dr. Birman focused on repetitive and forceful gripping activities when the palm is down in a pronated position, movements involving left-right movements of the wrist

while the palm is face down. He also indicated that wrist loading, where force through the wrist is applied, can be contributory. (RX 5, pp. 14-17, 19, 20)

Dr. Birman testified that he did not think Petitioner's ulnocarpal impaction was related to her work activities, as they were clerical in nature. He opined that it would require a sustained and forceful ulnar deviation and repetitive and sustained forceful gripping. He opined that force is an important contributory factor and that Petitioner's clerical-type work could not have contributed. He opined that it would take a traumatic accident or assembly line-type work to accelerate this condition. He stated that routine non-forceful use is not going to put any undue stress on the structures of the TFCC or the impact between the ulna and the lunate to change the course of the condition in any way. He indicated that it was his opinion that typing or mouse use puts no strain on the ulna. Dr. Birman disagreed with Dr. Fernandez opinion that force is only one element of risk and is not required for ulnar impaction. (RX 5, pp. 23-28)

Dr. Birman commented on the lack of impaction and movement from use of a computer mouse and keyboard. Dr. Birman believed Petitioner's work was variable, with frequent breaks. Dr. Birman did not believe any of the daily activities Petitioner mentioned in her July 28, 2021 visit note would have caused her condition, though they would have increased her pain. Dr. Birman was of the opinion that nothing Petitioner did accelerated or aggravated this condition beyond its normal course, and that the work activities would not have caused her TFCC tear. He was of the opinion that the treatment she received was reasonable and necessary, but not causally connected to her work activities. (RX 5, pp. 28-31, 33-40)

On cross-examination, Dr. Birman said he agreed with Dr. Fernandez's diagnosis, treatment recommendations, and surgery that Dr. Fernandez provided. He confirmed that in rare cases ulnar impaction can occur without a long ulna bone. Dr. Birman did not know the percentage of the population with a long ulna. Dr. Birman said having a long ulna did not mean a patient would necessarily get TFCC tearing or ulnar impaction, and he did not have an estimate as to the number of people with a long ulna who would develop ulnar impaction. Dr. Birman stated that this condition can be symptomatic from age thirty to the late sixties. (RX 7, pp. 41-46)

Dr. Birman testified that daily activities could cause ulnar impaction to worsen over time, and that he believed force played a much larger factor in the development of ulnar impaction than repetition. Dr. Birman testified to his opinion that he movement of the wrist was not repetitive enough, by itself, to cause this condition without significant force. (RX 7, pp. 47-50)

Dr. Birman said he never saw a video of Petitioner's work activities, did not know how many hours a day she worked, that he did not view Petitioner's work setup, computer station, type of mouse, keyboard, phone, or other equipment, and never saw exactly how she moved the mouse or positioned her wrist during her work activities. He said he was not aware of the variety of tasks Petitioner performed in a given workday or total amount of time for each activity. He testified that there was no force for mouse or keyboard work, though he never viewed Petitioner working. He said it was a degenerative condition which developed over time, Petitioner was predisposed to it due to the anatomy of her wrist, and the condition could become symptomatic over time, though it could not have been her work activities which contributed to it. (RX 7, pp. 51-55)

Dr. Birman said he would not call the condition idiopathic, as ulnar bone was the cause, but the majority of people with the ulnar length factor do not develop the condition, not everyone with this condition develops

arthritis in the bone. He said routine use of the mouse did not place the wrist to the end range stress position of the wrist, but he did not know what level of degree Petitioner was using her mouse. (RX 7, pp. 55-57)

Dr. Birman testified that he did not examine Petitioner, nor did he request to examine her on the basis of his review of records. (RX 7, pp. 61-62)

ARBITRATOR CREDIBILITY ASSESSMENT

Petitioner testified in a forthright manner consistent with the medical records, answering all questions put to her by both attorneys in a straightforward manner. Petitioner described her job duties and positions in great detail. She was cooperative on cross-examination, and when questioned about a job description for a job she did not perform, offered a copy of the correct job description to Respondent counsel, as Petitioner had brought it with her to the hearing. The Arbitrator finds Petitioner's description of how she performed her job, including frequent mouse usage over half her workday, credible, as well as her testimony that the mouse usage increased significantly in October of 2020.

The Arbitrator also finds both Dr. John Fernandez and Dr. Birman to be credible. Both were cooperative witnesses who answered all questions put to them. They appear to believe the opinions they gave. Dr. Fernandez had an advantage in arriving at his opinions that Dr. Birman did not, Dr. Fernandez saw Petitioner on multiple occasions both before and after surgery, and was able to view the actual injury during his surgery, while Dr. Birman was solely relying on a review of medical records, and job description for a job Petitioner did not perform. Dr. Birman's opinions were therefore, in part, based on the wrong job description, albeit a description quite similar to Petitioner's actual job description.

CONCLUSIONS OF LAW:

In support of the Arbitrator's decision relating to whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent on June 9, 2021, and whether Petitioner's current condition of ill-being is causally connected to this injury, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

Petitioner does not allege a specific traumatic injury, rather, that her condition is the result of a repetitive trauma to her right wrist and arm. Per *Peoria County Belwood Nursing Home*, "the date of an accidental injury in a repetitive-trauma compensation case is the date on which the injury 'manifests itself.' 'Manifests itself' means the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person." *Peoria County Belwood Nursing Home v. Industrial Commission*, 115 Ill. 2d 524, 531, 505 N.E.2d 1026, 1029 (1987). Petitioner on her

Application for Adjustment of Claim and the Request for Hearing form alleged an accident date of June 9, 2021. (Arb. X 1; Arb X 2) The date of Petitioner's initial diagnosis of a TFCC tear by PA Rudicil on June 9, 2021 meets this requirement, as a date of manifestation, for purposes of the Workers' Compensation Act. While Petitioner was having numbness and tingling symptoms that she related to work in May of 2020, she did not have a diagnosis, the causal relationship of the injury would not have been plainly apparent to a reasonable person, and she did not follow up for further treatment until June 9, 2021, at which time her ulnar impaction and TFCC tear symptoms had progressed significantly.

In regard to whether Petitioner suffered a repetitive accident which arose out of and in the course of her employment. The Arbitrator finds the testimony of Dr. Fernandez persuasive. Dr. Fernandez testified that the ulnar impaction condition is not inherently degenerative, and usually requires some kind of repetitive motion to cause the tearing itself. While the condition of having an unusually long ulna bone is pre-existing, most people with this condition do not become symptomatic. Petitioner testified that she used two monitors to do her work, and she had to use the mouse to move from one screen to another in a "sawing motion," often copying from one screen and pasting to the other. Respondent offered no evidence contradicting this testimony. Dr. Fernandez noted that the movement of the wrist from side-to-side can cause ulnar impaction. Petitioner testified that she had no other repetitive hobbies or activities that could have contributed to her injury, and no contrary evidence was provided by Respondent. Dr. Fernandez testified that repetitive use of the mouse would involve at least one-third of the workday, and Petitioner testified that she used a mouse more than half of her work day. Petitioner's testimony about her mouse usage was consistent with Dr. Fernandez' understanding of her job duties, and while mouse work is certainly light-duty, Dr. Fernandez adequately testified as to why force is not required for a TFCC injury to occur.

While Dr. Birman testified that it would be impossible to develop a TFCC tear based on Petitioner's job duties, the Arbitrator gives less weight to the opinions of Dr. Birman, as he never spoke with Petitioner, or examined Petitioner, relying solely on the review of medical records. The Arbitrator gives greater weight to the opinions of Dr. Fernandez, as he spoke with and examined Petitioner on multiple occasions, and actually viewed the tissue affected during his surgery.

The Arbitrator finds that Petitioner suffered an accident on June 9, 2021, which arose out of and in the course of his employment by Respondent. The Arbitrator further finds that Petitioner's medical condition, right wrist ulnar impaction, resulting in osteotomy of ulna, TFCC tear, and missing cartilage off the end of the ulna bone, is causally related to the accident of June 9, 2021. These findings are based on the testimony of Petitioner, the legal findings stated above, the medical records summarized above, and the opinions of Dr. Fernandez.

In support of the Arbitrator's decision relating to whether Petitioner gave notice to Respondent within the time limits stated in the Act, the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

The findings in regard to accident and causal connection, above, are incorporated herein.

Pursuant to Section 6(c) of the Act, notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. The accident date being June 9, 2021, notice would be required to have been given between June 9, 2021 and July 24, 2021.

Petitioner testified to having told her supervisors of her problem with her right wrist, and filled out a workers' compensation claim form. Multiple emails between Petitioner and company employees and Respondent's claims adjusters on June 16, 2021, June 23, 2021, July 1, 2021, July 7, 2021, and July 9, 2021, all refer to Petitioner making a workers' compensation claim, seeking medical attention for that claim, doctors seeking authority to treat the injuries suffered in the claim, as well as Petitioner's inquiries as to the status of the claim. All of those emails are dated within the 45 days after the accident. (PX 8, pp. 1-12)

Respondent had no objection to the introduction of Petitioner Exhibit 8 and introduced no evidence to refute Petitioner's testimony and Petitioner Exhibit 8.

Section 6(c)(2) of the Act states, "No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." Even if Petitioner's verbal notice to her supervisors and the email written notice to Respondent personnel and insurance adjusters was deficient in some manner, no evidence was introduced by Respondent to show it was prejudiced by such defect or inaccuracy.

The Arbitrator finds that Petitioner gave notice of the accident of June 9, 2021 as soon as was practicable, and within the 45 days after the accident.

In support of the Arbitrator's decision relating to what temporary benefits Petitioner is entitled to as a result of the accident of June 9, 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 Arbitrator's credibility assessment, above, is incorporated herein.

The findings in regard to accident and causal connection, and notice, above, are incorporated herein.

Petitioner claimed to be temporarily disabled from October 25, 2021 through January 4, 2022, a period of 10 2/7 weeks. Respondent denied liability for that period of disability based on its position of no accident/no causal connection. (Arb X 1)

Petitioner testified that she was off work from the date of her surgery, October 25, 2021, until released to full duty work on January 4, 2022. Dr. Fernandez testified that he would have had Petitioner on restrictions from her date of surgery through her release on January 4, 2022.

Respondent introduced no evidence in regard to Petitioner's inability to work for the time period in question, only Dr. Birman's testimony that he was of the opinion that Petitioner's condition was not due to her work activities. Accident and causal connection have been found, as noted above.

Petitioner testified she was off work and on short term disability for this time period.

The parties further stipulated to an 8(j) credit for benefits paid in the amount of \$7,015.80.

The Arbitrator finds that Petitioner was temporarily totally disabled as a result of the accident from October 25, 2021 through January 4, 2022, a period of 10 2/7 weeks. This finding is based upon the testimony of Petitioner and the records and testimony of Dr. Fernandez.

In support of the Arbitrator's decision relating to whether the medical services that were provided to Petitioner were reasonable and necessary as a result of the Accident of June 9, 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 Arbitrator's credibility assessment, above, is incorporated herein.

The findings in regard to accident and causal connection, notice, and temporary total disability, above, are incorporated herein.

The medical bills introduced into evidence in Petitioner Exhibit 6 are all related to the treatment of the injuries incurred in the accident with the exception of charges of Dr. Sarah E. Winter on Petitioner Exhibit 6, pages 6-7, 6-8, 6-9, which appear to be for unrelated autoimmune thyroiditis and gynecological examinations.

The Arbitrator finds that all of the bills introduced into evidence in Petitioner's Exhibit 6 are related to Petitioner's right wrist ulnar impaction, resulting in osteotomy of ulna, TFCC tear, and missing cartilage off the end of the ulna bone injuries and treatment, are reasonable and were necessitated to treat or cure Petitioner's injuries suffered in this accident with the exception of the charges of Dr. Sarah E. Winter. Said bills are to be paid pursuant to the Medical Fee Schedule. This finding is based upon the testimony of Petitioner, the medical records summarized above, and Dr. Fernandez's testimony, and Dr. Birman's testimony that the treatment was reasonable and necessary.

By stipulation of the parties, Respondent is entitled to credit for all amounts paid, if any, by its group health carrier, pursuant to Section 8(j) of the Act.

In support of the Arbitrator's decision relating to the nature and extent of the injury the Arbitrator makes the following findings:

The findings of fact, above, are incorporated herein.

The summaries of medical evidence and deposition testimony, above, are incorporated herein.

The Arbitrator's credibility assessment, above, is incorporated herein.

The findings in regard to accident and causal connection, notice, temporary total disability, and medical bills, above, are incorporated herein.

As the accident occurred after September 1, 2011, the nature and extent of the injury must be determined through the five-factor test set out in §8.1b(b) of the Act.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a Customer Service Representative at the time of the accident and that she is able to return to work in her prior capacity as a result of said injury. The Arbitrator notes that Petitioner continues to work in at a different employer doing substantially similar work. The Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 54 years old at the time of the accident. Because of Petitioner's age, and the remaining years of work life, the Arbitrator therefore gives *moderate* weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that she returned to her regular job, and chose to change jobs both within the company and move to a different company. No evidence was introduced indicating a diminution in earning capacity. Because of her job mobility and the lack of evidence of a decrease in earning capacity, the Arbitrator therefore gives *no* weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner has a titanium plate screwed into her bones. Her ulna bone was shaved down and her TFCC tear was repaired. While Petitioner has a scar from her wrist to her elbow on her right arm, Section 8(c) of the Act states that no compensation for disfigurement is payable if compensation is payable under Section 8(e) of the Act, and said scar is not considered in arriving at a permanency award in this cause. Petitioner testified that she still has occasional pain with movement. Because of this evidence of medical disability, 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 20% loss of use of the right hand and 10% loss of use of the right arm, pursuant to §8(e) of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	17WC010143
Case Name	Diane Ziegenhorn v. Barrington Rehabilitation
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	25IWCC0398
Number of Pages of Decision	11
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Adam Scholl
Respondent Attorney	Robert Harrington

DATE FILED: 9/25/2025

/s/Maria Portela, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DIANE ZIEGENHORN,

Petitioner,

vs.

NO: 17 WC 10143

BARRINGTON REHABILITATION,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on Remand from the Circuit Court of Cook County, Illinois County Department, Law Division, dated March 26, 2025.

On May 24, 2022, a hearing on Arbitration was held and a decision was issued on September 6, 2022, wherein Petitioner was awarded medical expenses as well as permanent partial disability benefits of 30% loss of use of the person as a whole based on a loss of trade. The Respondent filed a Petition to Review on the issues of causation and nature and extent of the permanency award, and the Petitioner filed a Petition to Review on the issue of nature and extent.

On April 11, 2024, the Commission issued a Corrected Decision and Opinion on Review wherein it affirmed and adopted the Arbitrator's Decision, but with adjustments to the weights allotted to §8.1b(b)(iv) and §8.1b(b)(v), as well as correcting a scrivener's error. This appeal ensued.

The Circuit Court of Cook County, Illinois County Department, Law Division remanded the instant case with specific instruction as to medical bills, causation and the permanent partial disability award.

Based on the Circuit Court's Order dated March 26, 2025, the Circuit Court confirmed the Commission's award of the outstanding medical expenses in the amount of \$3,700.15 delineated in Px8 and Px9, pursuant to §8(a) of the Act, subject to the fee schedule in §8.2 of the Act.

Per the instructions of the Circuit Court, the Commission addresses causal connection, with reference to the records of rheumatologist, Dr. Erin Arnold and explains the relevance and weights given to each of the §8.1b(b) factors in arriving at a permanency partial disability award of 30% loss of use of the person as a whole as follows:

Causation

Based on the evidence, Petitioner suffered from three auto-immune disorders prior to her accident on September 13, 2016. Specifically, Petitioner was treating with rheumatologist Dr. Erin Arnold for autoimmune diseases she has had since 2007. (T. 35, Px7, Rx6) The Petitioner testified that following the September 13, 2016, work accident, Dr. Arnold's treatment for her left hand primarily consisted of medication management. Similarly, Dr. Kurzydowski was treating her with pain management but none of the medications he prescribed to treat her post-accident left hand symptoms overlapped with any of the medications Dr. Arnold prescribed to treat her autoimmune diseases. (T. 35) Petitioner continues to treat with Dr. Arnold every three months for her autoimmune conditions, the symptoms of her hand, and medication management. (T. 45-6) Although Petitioner has been treating with Dr. Arnold since 2007, the records before the Commission only date back to 2015. (Px7, Rx6)

The Commission notes that in its March 26, 2025 Order, the Circuit Court specifically references Dr. Arnold's pre-accident records of March 3, 2015, June 4, 2015, July 2, 2015, October 22, 2015, February 25, 2016, and May 24, 2016. (See 3/26/25 Order pp. 5-7). These records include references to Petitioner's rheumatoid arthritis and specific difficulties the Petitioner experienced as well as some problems Petitioner identified with regard to pain in her left fingers, left wrist, left elbow and left shoulder. Petitioner's crush injury on September 13, 2016, involved her left upper extremity as well. However, the Commission notes that prior to the September 13, 2016, work accident the Petitioner was able to work full duty *without* restrictions. Additionally, at each of the visits with Dr. Arnold prior to the September 13, 2016, work accident, Petitioner's examination revealed that despite the overall pain complaints to her left upper extremity, Petitioner had full and pain-free range of motion. (Rx6)

Following the work accident of September 13, 2016, Petitioner was given a 25-pound lifting restriction by her orthopedist, Dr. Baxamusa and continued by her pain management specialist, Dr. Kurzydowski. Petitioner did not miss any time from work, and although she has held two different jobs since leaving Respondent's employ, she has not been released to work without the lifting restriction at any time.

Additionally, prior to the work accident there were no concerns that Petitioner might be suffering from chronic regional pain syndrome (“CRPS”). As early as September 27, 2016, Dr. Baxamusa was noting a suspected sensory neuritis and pain in her left thumb. (Px2) He expressed concern of a crush injury with sensory nerve irritation. By October 4, 2016, Dr. Baxmusa’s impression was of possible radial sensory neuritis and he prescribed therapy for desensitization. (Px2) Petitioner presented for pain management with Dr. Kurzydowski in November of 2016. (Px5) By December 13, 2016, Dr. Baxmusa was noting vasomotor changes and Petitioner’s description of color changes and discolorations. (Px2) As of February 7, 2017, Dr. Baxamusa was expressing concerns for CPRS, but deferred the diagnosis to Dr. Kurzydowski. (Px2) Additionally, Petitioner presented to Dr. Arnold on February 7, 2017 who noted the additional medications Petitioner was taking due to the crush injury sustained at work and noted a diagnosis of CRPS I of left upper limb. (Px7) Petitioner’s physical therapist also noted concerns for CRPS on May 23, 2017. (Px8) Dr. Kurzydowski testified that following the accident, as early as November of 2016, based on Petitioner’s complaints of pain, numbness and allodynia in the left hand, he was worried Petitioner could possibly have CRPS. (Px6, p. 10-11) Dr. Kurzydowski ultimately concluded he did not believe Petitioner had a full-blown CRPS because her symptoms did not fit the normal criteria that is considered part of the syndrome, but that she did develop a neuropathy of certain nerves in the hand. (Px6, 33-4)

From the time Petitioner began treating with Dr. Arnold in 2007 for her autoimmune diseases to her treatment post-September 13, 2016 work accident, Petitioner’s condition changed. Petitioner’s diagnoses of autoimmune disorders did not change, though all of the health care providers by whom she was treated post-September 13, 2016, work accident expressed concerns that she was developing neuritis and/or CRPS and she was started on Gabapentin and given a weight restriction of no more than 25 pounds – none of which were part of her treatment and/or restrictions of her pre-accident condition.

The Circuit Court’s Order specifically referenced that Dr. Kurzydowski failed to acknowledge or address Petitioner’s pre-injury reported symptoms reflected in the medical records or in any way differentiate them from Petitioner’s post-injury symptoms. (*See* March 26, 2025 Order, p. 14) The Court reasoned that a chain of events analysis can be used to demonstrate aggravation of a pre-existing injury and that the Commission has not identified evidence of aggravation of a pre-existing condition. (*Id.* at p. 15) Dr. Kurzydowski prepared a narrative report and Dr. Candido prepared a Section 12 Examiner Report. Both physicians opined that there was no evidence of an aggravation or worsening of a pre-existing condition. (Px6, narrative report of Dr. Kurzydowski; Rx2) Both Petitioner’s treater, Dr. Kurzydowski, and Respondent’s Section 12 examiner, Dr. Candido, were deposed. Neither opined that Petitioner’s condition was a result of a pre-existing condition. (Px6, Rx3, p. 33) The Commission finds that based on the evidence, the pre-existing condition was not the basis for the causation finding based on the chain of events analysis, but that the “chain of events” analysis was based on the new crush injury

from the work accident that resulted in work restrictions where work restrictions did not previously exist, new diagnoses and new medications.

"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*, 207 Ill.2d 193, 203 (2003). "The 'arising out of' component is primarily concerned with causal connection" and, to satisfy that requirement, a claimant must show "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.*

A Petitioner may be entitled to benefits under the Act even though he suffers from a preexisting condition of ill-being. *Id.* at 205. "[I]n preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Id.* at 204-05. "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.*) *Id.* at 205.

Additionally, "medical evidence is not an essential ingredient to support the conclusion of the ... Commission that an industrial accident caused the [Petitioner's] disability." *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 63 (1982); *see also Pulliam Masonry v. Industrial Comm'n*, 77 Ill.2d 469,471 (1979) ("It is not necessary to establish a causal connection by medical testimony."). "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*, 93 Ill.2d 63-64.

Petitioner's pre-existing diagnoses and conditions which affected, in part, her left upper extremity, are somewhat of a red herring. The Arbitrator pointed out that an employer takes its employees as it finds them, and that in the instant case, a chain of events theory of causation would apply – Petitioner was able to do her job with Respondent at full duty and without restriction prior to the work accident and, following the work accident was never able to work without restrictions imposed by her treating medical providers and, ultimately, had to leave her profession due to the injuries caused by the work accident. (Arb. Dec. pp 18-19)

The Commission is not persuaded by the opinions of Respondent's Section 12 examiner, Dr. Candido. Dr. Candido saw Petitioner only one time, one year after the work accident. (Rx2) At that time he felt she likely had a resolving neuropathic pain condition and felt she had no signs of CRPS. Dr. Candido did not perform a records review or

subsequent independent medical examination. Dr. Candido was not deposed until 2020. Dr. Candido opined that Petitioner was not at maximum medical improvement (“MMI”) at the time of his exam. (Rx3, p. 16) Dr. Candido conceded that Petitioner’s pain was improved with medication, and that the pain interfered with Petitioner’s sleep, work and activities of daily living. (Rx3, p. 8) Dr. Candido minimized the need for a 25-pound restriction to Petitioner’s left upper extremity (Rx3, p. 26) – not accounting for the fact that this was determined by multiple providers including Dr. Baxamusa as well as Elmhurst Health (as part of her pre-employment evaluation). Dr. Kurzydowski imposed a 7-8 pound restriction prior to the last time he saw her due to the increase in her symptoms. Dr. Candido also did not feel that Petitioner needed the medications prescribed by Dr. Kurzydowski, including Neurontin. (Rx3, p. 28) Dr. Candido testified that with regard to people with neuropathy or neuropraxia, Neurontin can be beneficial. (Rx3, p. 29) Although he did concede that if she had a marked increase of pain while off Neurontin, that may indicate it was providing some benefit. (Rx3, p. 30) Ultimately, Dr. Candido relied more on statistical probabilities than on the actual condition of Petitioner. (Rx3, p. 32)

Dr. Kurzydowski continued to treat Petitioner through 2019 and throughout his office visits documented Petitioner’s decline in condition. Dr. Kurzydowski managed Petitioner’s condition with medications that many times were used to treat CRPS. He additionally noted allodynia, sleep disturbances, decreased motion and strength. (Px5) Even Dr. Baxamusa noted the crush injury with sensory nerve irritation at his initial visit of September 27, 2016. (Px2) By November of 2016, Dr. Baxamusa felt Petitioner’s ongoing complaints warranted a pain management consultation. (Px2) By February of 2017, Dr. Baxamusa noted there had been some suggestion of possible CRPS. (Px2) Petitioner’s rheumatologist, Dr. Arnold, noted a CRPS diagnosis in February of 2017. (Px7) One of the physical therapists who treated Petitioner noted on March 29, 2017 that Petitioner continued to present with hyperalgesia and allodynia in the left upper extremity. (Px2 and Px4) Dr. Kurzydowski stopped short of diagnosing Petitioner with full-blown CRPS as she did not meet all of the Budapest criteria. (Px6, p. 33) However, he felt that she had a neuropathy that was chronic as it had not resolved in more than 2 years. (Px6, p. 35)

Drs. Candido, Kurzydowski and Rechitsky all opined that CRPS is a diagnosis of exclusion. Although both Drs. Candido and Kurzydowski did not believe Petitioner met the criteria for CRPS, Petitioner did have an ongoing chronic pain condition which required medication, medication management, and therapy. For the above-stated reasons, the Arbitrator is affirmed in the finding of causation between her current condition of ill-being and the work accident of September 13, 2016.

Permanent Partial Disability

The Circuit Court has additionally directed to the Commission to clarify how the Commission reached its permanent partial disability determination of 30% loss of the

person as a whole. Section 8.1b(b) of the Act is addressed *only* to the Commission. 820 ILCS 305/8.1b. It lists five factors upon which the Commission must base its determination of the level of permanent partial disability ("PPD") benefits to which a claimant is entitled, including (1) the level of impairment contained within a PPD impairment report, (2) the claimant's occupation, (3) the claimant's age at the time of injury, (4) the claimant's future earning capacity, and (5) evidence of disability corroborated by the treating medical records. *Id.* In subsection b, the legislature expressly directed that the Commission not consider any single enumerated factor to "be the sole determinant of disability." *Id.* Further, it sets forth the requirement that the Commission explain in writing the relevance and weight of factors it used to determine the level of impairment in addition to the level of impairment contained within a physician's PPD impairment report. the section speaks in terms of what factors the Commission is required to consider when determining the appropriate level of PPD.

The Commission affirmed the Arbitrator's Decision but changed the weights assigned to factors (iv) and (v) of the Section 8.1b(b) factors. The Commission awarded 30% loss of the person as a whole based on a loss of trade due to the injuries she sustained in the September 13, 2016, work accident.

The Circuit Court's Remand Order has directed the Commission to explain the relevance and weight given to each Section 8.1b(b) factor in arriving at the 30% loss of the person as a whole permanent partial disability award in compliance with the Statute. The Circuit Court's Order requested a more substantive explanation regarding the weights assigned to each factor, as well as additional support for the Commission's reasoning in determining the permanency award.

Specifically, amongst other things, the Circuit Court asked the Commission to explain why it gave Section 8.1b(b)(i) - the level of impairment contained within a PPD impairment report - no weight in light of no impairment report being submitted into evidence by either party. The Court felt that the Commission did not explain in regard to this factor whether the Petitioner suffered any impairment such as loss of range of motion, loss of strength, or atrophy of tissue mass consistent with the injury based upon some other evidence in the record.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Gruszczka v. Ill. Workers' Comp. Comm'n*, 2013 IL 114212, ¶12. "The language used in the statute is normally the best indicator of what the legislature intended." *Id.*

In *Continental Tire of the Ams. LLC v. Ill. Workers' Comp. Comm'n*, 2015 IL App (5th) 140445WC, the Court reasoned that the language of Section 8.1b(b) requires the Commission to consider a report prepared by a physician that includes an opinion concerning the level of the claimant's impairment. The Court reasoned that the statute does

not require the claimant to submit a written physician's report but only requires that the Commission, in determining the level of the claimant's permanent partial disability, consider a report that complies with subsection (a), regardless of which party submitted it. *Continental Tire* at ¶17. In addition, section 8.1b does not specify the weight that the Commission must give to the physician's report. Instead, Section 8.1b(b) states that "[n]o single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b) (West 2012). the Commission is obligated to weigh all of the factors listed within Section 8.1b(b) and make a factual finding with respect to the level of the injured worker's permanent partial disability with no single factor being the sole determinant of disability.

In *Corn Belt Energy Corp. v. Ill. Workers' Comp. Comm'n*, 2016 IL App (3d) 150311WC, the Court addressed the Section 8.1b(b) factors and the weights given to each. Subsection (b) of Section 8.1b of the Act is addressed *only* to the Commission. 820 ILCS 305/8.1b(b) (West 2012). It lists five factors upon which the Commission must base its determination of the level of PPD benefits to which a claimant is entitled, including (1) the level of impairment contained within a PPD impairment report, (2) the claimant's occupation, (3) the claimant's age at the time of injury, (4) the claimant's future earning capacity, and (5) evidence of disability corroborated by the treating medical records. *Id.* at ¶46. In Subsection (b), the legislature expressly directed that the Commission not consider any single enumerated factor to "be the sole determinant of disability." *Id.* Further, it sets forth the requirement that the Commission explain in writing the relevance and weight of factors it used to determine the level of impairment in addition to the level of impairment contained within a physician's PPD impairment report. *Id.* Subsection (b) does not require any action to be taken by either a Petitioner or a Respondent. Also, similar to Subsection (a), it contains no language limiting the Commission's ability to award PPD benefits in the absence of a PPD impairment report. Further, nothing in the plain language of the Act precludes a PPD award when no PPD impairment report is submitted by either party.

In the instant case, the Commission assigned Section 8.1b(b)(i) no weight as no impairment report was submitted into evidence by either party. The information sought by the Circuit Court from the Commission in assigning weight to this factor is the information set forth in Section 8.1b(a). Section 8.1b(a) provides in pertinent part that "[t]he report *shall include* an evaluation of medically defined and professionally appropriate measurements of impairment that *include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury;* and any other measurements that establish the nature and extent of the impairment." (Emphases added.) 820 ILCS 305/8.1b(a) (West 2014). However, the Commission did not assign weight to this factor as no impairment report was submitted and factor 8.1b(b)(i) is limited to a written report. As set forth in the body of the Commission's Decision, however, is the reasoning in support of the award of permanent partial disability benefits based on the totality of the evidence, including but not limited to Petitioner's physical deficits as set forth in the medical records and opinions contained in the medical providers' and Section 12 examiner's depositions.

The Commission has assigned weight to the factor contained in Section 8.1b(b)(v) where this information is contained. The legislature did not state that these factors are exclusive, so the Commission remains free to evaluate other relevant considerations. *See Flexible Staffing Servs. v. Ill. Workers' Comp. Comm'n*, 2016 IL App (1st) 151300WC, ¶22 citing *People ex rel. Madigan v. Kinzer*, 232 Ill.2 179, 184-85 (2009).

The Circuit Court's Order has further directed the Commission to separate the analysis regarding the weights assigned to factors (ii) and (iii). The Commission addresses each of the factors as follows:

(ii) The injured employee's occupation - At the time of the September 13, 2016 work accident, Petitioner was working as a physical therapist. At that time, she was working full duty without restrictions and working full time. Following the work accident, Petitioner was given a 25 pound lifting restriction. (Px2) Petitioner left employment with the Respondent approximately one year after her work accident in order to reduce her patient care time. (T. 40) She took a job with Elmhurst Health as a manager of rehab that was supposed to be more of a management role. That role did not work out, so she worked at Elmhurst Health as a staff therapist, but with the 25-pound lifting restrictions and not seeing patients with balance or gait deficits. (T. 41) Petitioner then left Elmhurst in January of 2019 because her physician recommended she transition to a non-clinical role. Petitioner took a job that did not require any type of physical aspects. (T. 43) Petitioner is no longer working as a physical therapist, but is working a desk job at American Academy of Orthopedic Surgeons. She currently oversees program management for registries and data science. (T. 45) The Commission finds that Petitioner is no longer able to perform her pre-accident occupation as a physical therapist, has sustained a loss of trade, and therefore, gives this factor more weight.

(iii) The age of the employee at the time of injury – Petitioner was 32 years old at the time of the September 13, 2016 work accident. Petitioner was unable to return to her usual profession as a staff physical therapist following the work accident. At age 32, Petitioner had a significant amount of work life ahead of her. The Commission finds that the relatively young age at which Petitioner sustained a loss of trade due to the work accident to be significant. The Commission gives this factor more weight.

The Circuit Court's Order also directed the Commission to clarify its Decision regarding the amendment of the weight of factor (iv) - the claimant's future earning capacity - from "less weight" to "no weight". There was no evidence presented by either Petitioner or Respondent regarding the Petitioner's future earning capacity, so this factor in and of itself – similar to factor (i) where there was no report provided – is given no

weight. The Commission weighs the factors as set forth in Section 8.1b(b) of the Act, but also weighs the totality of the evidence in reaching its conclusion. The Commission gives each of these factors no weight as there is no evidence presented to the Commission on which to base an opinion or render a Decision. However, the Commission is able to weigh the remaining factors in Section 8.1b(b), as well as additional evidence presented, and afford each of those factors appropriate weight to determine an appropriate permanency award. It is the Commission's function to assign weight to the evidence and draw reasonable inferences from the evidence. *ABBF Freight System v. Illinois Worker's Compensation Comm'n*, 2015 IL App (1st) 151306WC, ¶19.

Finally, with respect to Section 8.1b(b)(v) - evidence of disability corroborated by the treating medical records, the Commission addresses the Circuit Court's Order to further explain how the medical records confirm or make more certain that the cause of Petitioner's current condition resulted from the September 13, 2016, accident and not her pre-existing condition prior to the date of accident. As set forth above, Petitioner suffered from pre-existing autoimmune conditions wherein she complained along with other symptoms, of tenderness and swelling of the left hand. However, subsequent to the September 13, 2016 work accident, the medical records support that despite Petitioner's pre-existing conditions that affected her left upper extremity, Petitioner's condition changed following the work accident. Prior to the work accident, Petitioner had full range of motion in her left upper extremity and no work restrictions. (Rx6) However, after the work accident, Petitioner is noted to have a crush injury which caused suspected sensory neuritis, sensory nerve irritation and possible CRPS. (Px2, Px5, Px7, and Px8) Following the work injury Petitioner's treating physicians imposed a 25-pound lifting restriction that was never removed. (Px2, T. 36, 41) Petitioner's treating physicians and Respondent's Section 12 examiner opined that Petitioner's pre-existing conditions could not be aggravated by a crush injury. However, the medical records and the evidence support that Petitioner's condition changed after the September 13, 2016, work accident. The medical records support that since the work accident, Petitioner now has conditions consistent with sensory neuritis and/or CRPS, for which she needs ongoing medication therapy different from that that she required pre-accident, and now has a permanent lifting restriction. The medical records support that she did not require this particular type of medication therapy, a permanent lifting restriction, nor was she diagnosed with sensory neuritis and/or CRPS prior to the September 13, 2016, work accident.

Based on the totality of the evidence, the Commission finds that the testimony of the Petitioner credibly set forth how her condition changed following the work accident. The pre and post-accident medical records demonstrate a significant change in condition – despite there being symptomatology to the left upper extremity both prior to and after the work accident. The evidence supports that Petitioner's change in condition following the work accident necessitated a career change. Therefore, the Commission finds that by a preponderance of the evidence Petitioner has met her burden of proof that she sustained a work accident on September 13, 2016, that resulted in a loss of trade and accordingly, the

Commission awards Petitioner 30% loss of person as a whole pursuant to Section 8(d)2 of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$775.18 per week for a period of 150 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 30% loss of use of the person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay Petitioner \$3,700.15 for the outstanding medical bills identified in Px8 and Px9 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 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.

September 25, 2025

MEP/dmm
O: 92525
49

/s/ Maria E. Portela

Maria E. Portela

/s/ Marc Parker

Marc Parker

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005708
Case Name	INSURANCE COMPLIANCE v. OPTIMUM GRANITE & MARBLE INC
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	25IWCC0399
Number of Pages of Decision	7
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	

DATE FILED: 9/24/2025

/s/Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF KANE)

☐	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

ILLINOIS DEPARTMENT OF INSURANCE
 INSURANCE COMPLIANCE DEPARTMENT,

Petitioner,

vs.

NO. 24 WC 5708
 23 INC 60

OPTIMUM GRANITE & MARBLE, INC. and
 DENIS BAHIC, individually and as owner of
 Optimum Granite & Marble, Inc.,

Respondent.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

This matter comes before the Commission on Petitioner's action for penalties for the willful failure to comply with the requirements to maintain workers' compensation insurance pursuant to Section 4(d) of the Illinois Workers' Compensation Act (hereinafter, the "Act"). Petitioner, the Illinois Department of Insurance, Insurance Compliance Department, represented by the Office of the Illinois Attorney General, brought its motion before Commissioner Frank Soto in Geneva, Illinois on July 24, 2025. Petitioner alleges that Respondent failed to maintain mandatory workers' compensation insurance for 913 days from July 7, 2010 to August 23, 2010, September 3, 2011 to November 13, 2011, January 15, 2012 to December 3, 2012, February 4, 2013 to February 5, 2014, and October 2, 2018 to January 16, 2019. Proper and timely notice was provided to Respondent. (Px 3). Respondent did not appear in person or through counsel. A record was made.

I. Findings of Fact

Petitioner called George Sweeney, the Assistant Deputy Director of Workers' Compensation Compliance for the Illinois Department of Insurance (hereinafter, the "Department"), to testify. Mr. Sweeney supervises the Department's investigations of Section 4(d) violations in an effort to make sure that employers who are mandated by the Act to hold workers' compensation coverage do so. Mr. Sweeney has direct supervisory knowledge of the

Department's investigation into Respondent's alleged non-compliance. The Department started its investigation into Respondent's business when it learned that the Injured Workers' Benefit Fund had been named as a party on a case involving Respondent.

Through its investigation, the Department obtained documents from the National Council on Compensation Insurance (hereinafter, "NCCI"). Mr. Sweeney testified that NCCI was an entity that maintained an active database of all workers' compensation policies for employers in Illinois. Mr. Sweeney testified that the NCCI documents, which were admitted as Petitioner's Exhibit 8, detail when a workers' compensation insurance policy was and was not in place for Respondent. The NCCI certification indicates that Respondent did not hold a workers' compensation insurance policy from November 15, 2012 to December 3, 2012, December 5, 2013 to February 5, 2014, and October 2, 2018 to January 16, 2019.

Mr. Sweeney also testified that the NCCI certification shows that Respondent did hold workers' compensation insurance intermittently between 2010 to 2018. Specifically, it indicates that Respondent held a policy effective from May 15, 2010 to May 15, 2011 that was canceled on July 6, 2010; followed by a policy from August 24, 2010 to May 15, 2011; followed by a policy effective from May 15, 2011 to May 15, 2012 that was canceled on September 2, 2011; followed by a policy from November 14, 2011 to November 14, 2012 that was cancelled on January 15, 2012; followed by a policy from December 4, 2012 to December 4, 2013 that was canceled on February 3, 2013; followed by consecutive policies that were not canceled before their expiration dates from February 6, 2014 through February 6, 2017; followed by a policy from February 6, 2017 to February 6, 2018 that was canceled on October 16, 2017; and finally, followed by a policy from October 1, 2017 to October 1, 2018.

The Department's investigation further confirmed that Respondent was not self-insured during the periods of alleged non-compliance. Mr. Sweeney explained that a self-insurer was a business that was authorized to insure its own workers' compensation liability under the Act. Petitioner's Exhibit 9 is a certification from the State of Illinois' Office of Self-Insurance Administration dated December 20, 2023. Said certification indicates that no certificate of approval to self-insure was issued to Respondent.

Mr. Sweeney further testified that the Act defined several activities that, if engaged in by a business, fall under the Act. Mr. Sweeney testified that Respondent was subject to the Act, because it was a granite business that utilized cutting tools as well as motorized gasoline and electric equipment. As such, Mr. Sweeney determined that the Act required Respondent to provide workers' compensation insurance to any employees. Mr. Sweeney testified that the documents he obtained from the Illinois Department of Employment Security showed that Respondent employed up to 13 employees at any given time. More specifically, said documents, which were submitted in Petitioner's Exhibit 12, indicate that Respondent had between five to 14 employees throughout the third quarter of 2010, the third quarter of 2011 through the first quarter of 2014, the fourth quarter of 2017, and the fourth quarter of 2018 through the first quarter of 2019.

The Commission also takes judicial notice of the arbitration decision in the matter of Javier C. Hernandez v. Optimum Granite & Marble, Inc. and State Treasurer as *ex-officio* custodian of the Injured Workers' Benefit Fund, 13 WC 29612. (Px 10). In this decision, which was filed on

June 20, 2025, the Arbitrator found that Respondent was operating under and subject to the provisions of the Act as of April 29, 2013. Specifically, the Arbitrator determined that Respondent's activities fell within the purview of sub-sections (1) and (2) of Section 3 of the Act, because the evidence established that Respondent was an employer engaged in the business of construction, excavating, maintaining, removing, remodeling, altering, or demolishing of a structure. The Arbitrator further found that the claimant was an employee of Respondent's business at the time of his April 29, 2013 work accident. Mr. Sweeney testified that his investigation concluded that Respondent lacked workers' compensation insurance on this particular date and that its estimated liability was up to \$155,000.00 on this case.

Mr. Sweeney further presented Respondent's certified tax records from the Illinois Department of Revenue. These records, admitted as Petitioner's Exhibit 11, show that Respondent filed Illinois Withholding Income Tax Returns for the reporting periods of September 30, 2010, December 31, 2011, June 30, 2012, September 30, 2012, December 31, 2012, March 31, 2013, June 30, 2013, September 30, 2013, December 31, 2013, December 31, 2017, December 31, 2018, and March 31, 2019. They additionally indicate that Illinois Withholding Income Tax Returns were filed by Respondent for the reporting periods of September 30, 2011 and March 31, 2012, but the records of these tax returns had been destroyed.

Through inquiries made with the Illinois Secretary of State's Office, Mr. Sweeney was able to identify Denis Bahic as Respondent's registered agent and president. Petitioner's Exhibit 6 shows the business entity search results on the Secretary of State's website. It establishes that Respondent was incorporated on July 17, 2006 and ultimately dissolved on December 13, 2019. Mr. Sweeney testified he also obtained a series of certified records from the Secretary of State's Office, which were included in Petitioner's Exhibit 7, that told him Respondent's correct business name, date of incorporation, date of dissolution, and the names and addresses of its officers. Mr. Sweeney identified Respondent's owners as Denis Bahic and Salih Bahic and its other officers as Safet Bahic and Ajit Choudhary.

On July 11, 2023, the Department mailed a Notice of Non-Compliance to Denis Bahic, individually and as the owner of Respondent's company, detailing its alleged periods of non-compliance with the requirements of Section 4(a) of the Act. It instructed Respondent to submit evidence of compliance or otherwise respond in writing to the Commission within 30 days of its receipt of the notice. Mr. Sweeney testified that he never received any information, documents, or proof to indicate that Respondent was exempt from the requirements of the Act. Also on July 11, 2023, the Department mailed Respondent a Notice of Informal Conference scheduled for August 23, 2023 related to its periods of alleged non-compliance. Respondent failed to appear at the informal conference on that date. Mr. Sweeney testified that his investigator communicated with Respondent after the notices were sent but they were unable to reach any resolution in the informal hearing process.

Upon completion of his investigation, Mr. Sweeney determined that Respondent was required by the Act to provide workers' compensation insurance for its employees but failed at times to do so. More specifically, Mr. Sweeney testified that Respondent failed to maintain proper workers' compensation coverage from July 7, 2010 to August 23, 2010, September 3, 2011 to November 13, 2011, January 15, 2012 to December 3, 2012, February 4, 2013 to February 5, 2014,

and October 2, 2018 to January 16, 2019. Mr. Sweeney testified that at the time of the hearing, Respondent was still an operating entity that employed workers; however, to the best of his knowledge, Respondent had again become complaint in obtaining workers' compensation insurance after being served with the Notice of Non-Compliance. Following Mr. Sweeney's testimony, Petitioner asked the Commission to award the maximum penalty of \$500.00 per day for the periods of alleged non-compliance.

II. Conclusions of Law

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. 820 ILCS 305/4(a). Section 9100.90(a) of the Commission 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 using an insurance carrier authorized, licensed or permitted to do such insurance business in Illinois." 50 Ill. Adm. Code 9100.90(a).

Section 3 of the Act mandates that certain employers are automatically subject to the provisions of the Act if they engage in specific business activities. 820 ILCS 305/3. Mr. Sweeney's testimony establishes that Respondent's business utilized cutting tools as well as motorized gasoline and electric equipment. Such activities elicit the automatic coverage sub-sections of Section 3(8) and (15). Moreover, the Commission takes judicial notice of the arbitration decision rendered in 13 WC 29612, specifically finding that Respondent's activities fell under Section 3(1) and (2) of the Act because Respondent was engaged in the business of construction, excavating, maintaining, removing, remodeling, altering, or demolishing of a structure. Accordingly, the Commission finds that the work Respondent engaged in automatically subjected it to the provisions of the Act.

All employers who fall within the provisions of Section 3, as Respondent does, are required to provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4. In this respect, the Commission first finds that Respondent failed to establish that it was given approval to self-insure, as confirmed by the Office of Self-Insurance Administration records. The Commission further finds that Respondent was in violation of the Act for failing to maintain proper workers' compensation insurance for a total period of 913 days from July 7, 2010 to August 23, 2010, September 3, 2011 to November 13, 2011, January 15, 2012 to December 3, 2012, February 4, 2013 to February 5, 2014, and October 2, 2018 to January 16, 2019. Both Mr. Sweeney's testimony and the NCCI certification establish that Respondent lacked workers' compensation insurance during these periods of non-compliance. The arbitration decision in 13 WC 29612 further shows that at a point during its period of non-compliance, specifically on April 29, 2013, Respondent had an employee who had sustained a work injury that was not properly covered by insurance. The Illinois Department of Employment Security also counted that Respondent had between five to 14 employees throughout its various periods of non-compliance.

Regarding the issue of penalties for failure to maintain workers' compensation insurance coverage, Section 4(d) of the Act states, in relevant part:

“Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and willful failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section, ... the Commission may assess a civil penalty of up to \$500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of \$10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty.” 820 ILCS 305/4(d).

The Commission notes that the Application filed in this claim names only Respondent's business, Optimum Granite & Marble, Inc., and not any of its officers, as parties. In light of the substantial periods of time in which Respondent was complaint in taking out and paying for workers' compensation coverage for its employees, the Commission finds that Respondent knowingly and willfully failed to maintain its workers' compensation insurance throughout the stated periods of non-compliance. Respondent also continued to be non-complaint for quite some time after one of its employees sustained an uncovered workers' compensation accident on April 29, 2013. Therefore, the Commission determines that the fines permitted under Section 4(d) of up to \$500.00 per day are appropriate for each of the 913 days of non-compliance from July 7, 2010 to August 23, 2010, September 3, 2011 to November 13, 2011, January 15, 2012 to December 3, 2012, February 4, 2013 to February 5, 2014, and October 2, 2018 to January 16, 2019. This equates to a total penalty of \$456,500.00 assessed against Respondent.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Optimum Granite & Marble, Inc. and Denis Bahic, individually and as owner of Optimum Granite & Marble, Inc., pay the Illinois Workers' Compensation Commission \$456,500.00 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that pursuant to Commission Rule 9100.90, once the Commission assesses a penalty against an employer in accordance with Section 4(d) of the Act, payment shall be made according to the following procedure: 1) payment of the penalty shall be made by certified check or money order 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; 2) payment shall be mailed or presented within 30 days after the final Order of the Commission or the Order of the court on review after final adjudication to:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 S. LaSalle Street, 13th floor
Chicago, Illinois 60603

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

SEPTEMBER 24, 2025

R: 7/24/25

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	22WC009271
Case Name	Tarrah Phillips v. Dr. Ahmad Samadzai, DDS
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0400
Number of Pages of Decision	17
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Jon Rosenstengel
Respondent Attorney	Joseph Cervantez

DATE FILED: 9/25/2025

/s/Maria Portela, 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

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

The Commission affirms the Decision of the Arbitrator, though strikes the first full paragraph on page 8 under subsection “C” of the Arbitrator’s Decision. Additionally, the Commission adds the following sentence to the beginning of the paragraph starting with “Petitioner testified that while working as a dental assistant...”:

The *McAllister* Court set forth three types of risk to which a claimant is exposed – (1) acts he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *McAllister*

22 WC 9271

Page 2

v. Ill. Workers' Comp. Comm'n, 2020 IL 124848 ¶46. This case is compensable under the first prong as the Petitioner was performing acts as instructed by her employer.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 21, 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 \$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.

September 25, 2025

/s/ Maria E. Portela
Maria E. Portela

MEP/dmm
O: 91125
49

/s/ Marc Parker
Marc Parker

/s/ Christopher A. Harris
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC009271
Case Name	Tarrah Phillips v. Dr. Ahmad Samadzai, DDS
Consolidated Cases	
Proceeding Type	19(b) Petition Remand Arbitration
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Jon Rosenstengel
Respondent Attorney	Sarah Hocking

DATE FILED: 2/21/2025

/s/ Bradley Gillespie, Arbitrator

 Signature

THE INTEREST RATE FOR THE WEEK OF FEBRUARY 19, 2025 4.22%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TARRAH PHILLIPS

Employee/Petitioner

v.

DR. AHMAD SAMADZAI, DDS

Employer/Respondent

Case # **22 WC 009271**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Mr. Vernon**, on **December 10, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **March 28, 2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$28,433.00**; the average weekly wage was **\$599.43**.

On the date of accident, Petitioner was **36** 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 **\$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 **\$3,403.67** under Section 8(j) of the Act.

ORDER

Respondent is liable for the following medical charges including Dr. Thomas Lee, in the amount of \$1,127.00, The Orthopedic Surgery Center of Creve Coeur, Dr. Helen Blake, in the amount of \$2,238.41, and Dr. Matthew Gornet in the amount of \$22,790.00, per Sections 8(a) and 8.2 of the Act. Respondent shall receive a credit for amounts previously paid including a credit of \$3,403.67 paid to SSM Good Samaritan Hospital in Mt. Vernon.

Respondent shall pay temporary total disability benefits from March 29, 2022, through December 10, 2024, a period of 141 weeks.

Respondent shall authorize and pay for the prospective medical treatment recommended by Dr. Matthew Gornet including the L5-S1 disc replacement surgery and associated follow up 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.

Bradley D. Gillespie

Signature of Arbitrator

February 21, 2025

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TARRAH PHILLIPS,	)	
	)	
Employee/Petitioner,	)	
	)	
v.	)	Case # 22WC009271
	)	
DR. AHMAD SAMADZAI, DDS,	)	
	)	
Employer/Respondent.	)	

19(b) DECISION OF ARBITRATOR

This matter proceeded to hearing on December 10, 2024, in Mt. Vernon, IL under Section 19(b) of the Act. (Arb. Ex 1). Tarrah Phillips [hereinafter "Petitioner"] filed an Application for Adjustment of Claim on April 7, 2022, alleging accidental injuries to her lumbar spine in the course of her employment with Dr. Ahmad Samadzai, DDS [hereinafter "Respondent"] occurring on January March 28, 2022. (Arb. Ex 2). The following issues were in dispute:

- Accident;
- Notice;
- Causal Connection;
- Medical Bills;
- Temporary Total Disability; and
- Prospective Medical Treatment
- The parties stipulated that Respondent shall receive a credit for \$3,403.67 for medical bills paid for the date of March 28, 2022, to SSM Good Samaritan Hospital for Emergency services.

Petitioner filed two cases against Respondent. Case number 22WC009266 involves an alleged accident January 12, 2022, involving an alleged injury to Petitioner's lumbar spine pending before Arbitrator William Gallagher that was to be dismissed by Petitioner. Case number 22WC009271 involves an alleged accident date of March 28, 2022, and also involves an alleged injury to Petitioner's lumbar spine. The cases were not consolidated for trial, but rather the earlier filed claim for the same body part was to be dismissed by Arbitrator William Gallagher, thereby allowing the only remaining claim to be tried before this Arbitrator on December 10, 2024.

FINDINGS OF FACT**Testimony of Petitioner**

Petitioner was 36 years old, married, with two dependent children at the time of the accident. (Arb. Ex. 2) Petitioner was employed at various times by Respondent as a dental

assistant for a total of nine and one half years with a period of 47 weeks preceding her alleged accident. (Tr. p. 13) Her job duties included sterilizing instruments, cleaning rooms and setting up rooms. When she assisted the doctor there were times she was able to do the work sitting but sometimes needed to stand *Id.* Petitioner is five foot two inches tall. (Tr. p. 14) She affirmed that her height made a difference in terms of which procedures she had to stand verses being seated. *Id.* Some procedures like fillings she was able to sit and sometimes she would have to stand depending on the size of the patient and the way the doctor had the patient angled. *Id.*

Prior to March 28, 2022, Petitioner testified that she had experienced back and neck issues including a neck surgery in 2013. (Tr. p. 15) She stated that the neck surgery was a result of an automobile accident. *Id.* Dr. Matthew Gornet performed that surgery. (Tr. p. 16) Petitioner testified that she had seen chiropractors in the past for her low back. *Id.*

Petitioner had pain in her low back after work in January 2022. After completing a day of work, she had to go to the emergency room because she was felt pressure in her low back. (Tr. p. 17) After completing a round of steroids, Petitioner stated, "I was doing fine." *Id.* The only treatment she received for this incident was the emergency room. *Id.* She worked without incident from January 2022 up until the date of the current accident March 28, 2022. (Tr. p. 18) Between January and March 2022, she was able to do her job both standing and sitting as required. *Id.* She saw the normal load of patients with the doctor, and she worked four days per week eight and one half hours per shift. (Tr. pp. 18-19)

On March 28, 2022, Petitioner opened and prepped the rooms, she put all the clean instruments in the position to be used, and she set up for incoming patients. (Tr. p. 19) Petitioner testified that the doctor typically sees five patients in the morning and that March 28, 2022, was a typical day at her job (Tr. pp. 19-20) When she came in that morning, Petitioner did not have any issues with her low back at all. (Tr. p. 20) Before she had the incident that day, she believed they had seen three or four patients and she did not have any issues with her low back during those first patients. (Tr. pp. 20-21) During the first three or four patients she did some of the assisting of the doctor from a standing position and some from a seated position. (Tr. p. 21) During some of those patients she was required to get into an awkward position to assist the doctor and she did okay with those positions. *Id.*

Petitioner assisted on a patient (abbreviated here as J.W. for privacy) who came in for a cleaning. Petitioner testified that she had to stand to assist the doctor correctly. (Tr. p. 23) She testified that the room had a mobile side arm and for her to sit down to assist properly would not have worked. *Id.* Petitioner pointed out that the first picture of Respondent's Exhibit 6 was the room that she was working in when the accident occurred. *Id.* Petitioner explained that if she moved the sliding instrument table out of the way to sit, the doctor would not be able to reach the tools properly. (Tr. p. 24) Petitioner testified that the cleaning lasted about 30 minutes, but she was in an awkward position standing for about fifteen to twenty minutes. (Tr. pp. 24-25) She described standing bent almost at a 90-degree angle during that entire time. (Tr. p. 25) Petitioner testified that if she was not at that particular angle, she would have not been able to suction the patient properly. *Id.* Her testimony was that this patient had a buildup on his teeth which required a longer than normal cleaning which used more water than normal. (Tr. pp. 25-26) Petitioner stated that it was not typical to be bent over at this angle for 15 to 20 minutes. (Tr. p. 26) She indicated that Respondent was with her the entire time and that he was in a seated position. *Id.* While Petitioner was bent over, she did not feel any pain in her low back. (Tr. p. 27)

When she went to straighten up from the awkward position, she felt a pop and immediately felt numbness and tingling down her right leg. *Id.* Petitioner stated that she had “never felt that before.” (Tr. p. 28).

She did not report that incident to the doctor immediately because she thought she could get to lunch, sit down and relax for 45 minutes, and feel better. (Tr. pp. 28-29) Petitioner finished her duties for the morning and went to lunch. (Tr. p. 29) During lunch, she was not able to eat much of her food due to the pain. It was then that she realized there was major issue with her back, and she was unable to stand. (Tr. p. 30) From the time that she straightened up and felt a pop, she had pain in her lower back and numbness and tingling in her leg. *Id.* Her lunch break was about an hour and the pain got worse during that time. She was not physically able to stand up after her lunch. (Tr. p. 31) At that point, Petitioner called her mother and told her that she could not stand up and needed to go to the emergency room. *Id.* When she could not stand up, she called the doctor immediately on his cell phone. *Id.* After lunch, the doctor and his wife came back to the office. By that time, Petitioner’s mother was already at the office. The break room was in the basement and Respondent’s wife Teri, who is also the manager, escorted Petitioner’s mother to the break room where Petitioner’s mother carried her up stairs. (Tr. p. 34) At the top of the stairs the office manager met Petitioner and her mother with a wheelchair *Id.* Petitioner used the wheelchair to get out of the office and they went to the emergency room at SSM Good Samaritan Hospital in Mt. Vernon. (Tr. p. 35)

At the emergency room Petitioner underwent a CT scan and was told to see an Orthopedic Physician. (Tr. pp. 36-37) On March 29, 2022, Petitioner was seen by Dr. Thomas Lee. She saw Dr. Lee approximately six times. Dr. Lee ordered Physical Therapy and put the Petitioner on a muscle relaxer. She had not had physical therapy since it had not been approved by Workers’ Compensation. (Tr. p. 38) Dr. Lee referred the Petitioner to Dr. Matthew Gornet as they work in the same building. *Id.*

When treatment was not being approved by the Workers’ Compensation carrier Petitioner texted Teri, the wife and office manager for Respondent, to ask if this claim had been turned over to Workers’ Compensation. Petitioner’s text messages are included in Respondents Exhibit 7. In those text messages Petitioner asked the office manager whether the claim had been turned over to Workers’ Compensation carrier. Teri, the office manager, questioned whether this was work related and Petitioner responded that after her January incident her back had been doing fine and that this incident that she had on March 28, 2022, was the cause of her current problems. (Tr. p. 40)

Petitioner evaluated by Dr. Helen Blake for injections, and she had two injections in her low back. (Tr. p. 41) Petitioner was eventually seen by Dr. Matthew Gornet, an Orthopedic Spine Surgeon, who examined Petitioner, reviewed her MRI, and ordered various tests. He eventually recommended a disk replacement at L5-S1 which the Petitioner desires to have done. (Tr. p. 42) Petitioner has not had any surgery approved by Workers’ Compensation and has been off work since March 29, 2022, until the day of the hearing December 10, 2024, without any payment of TTD. *Id.* The Workers’ Compensation carrier did pay for the initial emergency room visit to Good Samaritan Hospital.

On cross examination, Petitioner testified that she had seen a chiropractor as far back as December of 2016 for low back pain. (Tr. p. 45) The chiropractor’s records indicated that Petitioner was treating for low back pain. Petitioner testified that after a days work she would be

sore and would sometimes go to the chiropractor. (Tr. p. 48) The chiropractor's records indicated that Petitioner complained of lower back pain/pressure. (Tr. p. 50) A pain diagram in the chiropractor's notes depicted pain into the right buttock and Petitioner agreed that was correct. (Tr. p. 52) Petitioner testified that experienced pain in 2006, during the second trimester of her pregnancy, in her low back. (Tr. p. 54) In 2018, there was a chiropractor named Dr. LaMaster, who had an agreement with Dr. Samadzai that Dr. Samadzai's employees would get free or reduced chiropractic care. (Tr. pp. 55-56) Petitioner testified that she did not have any treatment from Dr. LaMaster after January 14, 2022. (Tr. p. 57) Petitioner testified that between 2016 and 2022 her back would get better, and then worse during that period of time, and if she did have pain in her right leg, it would never go past her thigh. (Tr. p. 59)

Petitioner testified that there were three additional patients after J. W. and that she did not have to stand for any of those additional patients. (Tr. p. 68) She stated that her back still hurt while seeing the next three patients, but she did not tell the doctor that her back was hurting at that time. (Tr. p. 70) She did call Respondent at 1:48 p.m. on March 28th to tell him that her back was hurting as a result of working on J.W.

Petitioner's back has not gotten any better from March 28, 2022, until December 10, 2024. (Tr. p. 71) She did not seek out physical therapy because her health insurance would not cover it. She has not sought employment since the date of the accident because Dr. Gornet still has her off work. (Tr. p. 72) Petitioner was asked about her husband's work processing wood and butchering animals and Petitioner testified she does not assist her husband in any of that work (Tr. p. 79)

At the time of hearing Petitioner testified that her pain goes down her right leg all the way to her toes. She stated that she had never experienced that before. The pain in her back never goes away, she lives with it 24/7. (Tr. p. 83)

Testimony of Dr. Samadzai

Dr. Samadzai testified that he is a self-employed dentist and has been self-employed since 2011. (Tr. p. 86) Petitioner first started working for him and around 2012. (Tr. p. 87) Dr. Samadzai testified that he disagreed with Petitioner's description of her job duties as it relates to standing throughout the day. *Id.* He testified that they sit down for 90-95 % of their procedures. *Id.* He testified that the seats in the office are designed for dental assistants to be seated during the procedures. *Id.* Specifically, Respondent testified that he disagrees that the Petitioner had to stand for every patient because that's not how procedures are done. (Tr. pp. 87-88) Dr. Samadzai testified that he remembered March 28, 2022. (Tr. p. 88) He testified that they started their day like any other day at 7:30 am. (Tr. p. 89) They had normal levels of patients that day with patients scheduled every 45 minutes. *Id.* Each procedure took approximately 30 minutes which left 15 minutes in between every patient. *Id.* He believes that J. W. was either the third or fourth patient of the day. *Id.* Respondent testified that they performed a routine cleaning. He said that he received a call after he left for lunch from the Petitioner stating that she hurt her back during J. W.'s appointment and that her mother was going to come and get her and take her to the emergency room. (Tr. p. 90) Respondent testified that he did not think Petitioner stood for 15- 20 minutes of J.W.'s appointment, and that she performed most of the time sitting down. *Id.* He stated that Petitioner would not have performed suctioning the entire time because it was a cleaning. (Tr. p. 91) He did not believe that the Petitioner exhibited any sort of pain during J. W.'s appointment or any appointments after that. (Tr. p. 92) Respondent testified on cross-

examination that Petitioner was seated the entire time of the appointment. (Tr. p. 98) Respondent agreed that Petitioner did call him at 1:48 pm on March 28, 2022, and that she did say it was during the J. W. appointment that she was injured. *Id.* He also agreed that his wife got a text later on asking about the workers' compensation carrier. *Id.*

Deposition of Dr. Matthew Gornet

Dr. Matthew Gornet testified by deposition on behalf of Petitioner. (PX 1) Dr Gornet first saw the Petitioner in October of 2014 for her cervical injury. He first saw her on January 12, 2023, for her low back. She gave a history that she was working for an oral surgeon, and she was bending over at an awkward angle. She was in this position for a prolonged period of time, possibly 20-30 minutes. She twisted when she came up and felt a pop in her back. Over the next period of hours her pain became more severe. (PX 1 pp. 6-7) He noted that she had failed conservative measures including a steroid injection by Dr. Blake. He had an MRI that showed structural disk pathology at L2-3 as well as L5-S1. (PX 1 p. 8) Petitioner's physical examination showed decreased sensation in the L5 distribution bilaterally right greater than left. She had normal strength, and she had no functional overlays in bending. She was having radicular symptoms which was consistent with L5 nerve root compression. He believed that her physical exam correlated to the MRI findings. His working diagnosis when he first saw Petitioner was disk injury as well as aggravation of some preexisting degeneration. (PX 1 p. 9) He related her current problem to her work activities of March 28, 2022. Dr. Gornet agreed that she had preexisting pathology at L2-3, but Petitioner was at an awkward angle for 20-30 minutes which caused spasms. Petitioner changed positions to twist to come back out of the awkward angle, and that is how the disc was injured. The fact that she felt a pop is how Dr. Gornet knows that the annulus gave way. (PX 1 p. 10) Dr. Gornet opined that Petitioner was temporarily total disabled from the date of the accident until the time he saw her and thereafter. He referred Petitioner for additional conservative care including physical therapy and injections which took place in February 2023. (PX 1 p. 12) Dr. Gornet had a CT Discogram performed on May 10, 2023, along with a follow up MRI scan which showed a linear tear in the disc at L5-S1. He believed L5-S1 was related to the incident that she described to him on March 28, 2022, and that the linear tear in the disc at L5-S1 was consistent with a disc injury at that level. (PX 1 p. 13) The Discogram confirmed that L5-S1 level was the generator of Petitioner's pain as a result of that injury. Dr. Gornet recommended a single level lumbar disk replacement at the L5-S1 level. (PX 1 p. 14) He believed that the need for the disc replacement was casually related to the incident of March 28, 2022. He expected Petitioner to have follow up X-Rays and CT scan in three months post-surgery with the potential to return to work full duty around the sixth month mark after surgery. (PX 1 p. 15)

On cross-exam examination, Dr. Gornet was asked about Petitioner's preexisting back condition as well as her prior chiropractic care. He described Petitioner as someone who had "regular maintenance chiropractic care." (PX 1 p. 20) Dr. Gornet testified that the pain that was described in Petitioner's chiropractic records referred to pain that was at L2-3 level which is very different from the L5-S1 level. (PX 1 p. 23). Dr. Gornet testified that Petitioner had worked without restrictions for years prior to her March 28, 2022, accident and the L5-S1 pain emanating from her low back could go all the way down the leg to the feet. He testified that at a minimum there was an aggravation of the L2-3 level but that the medical records show that her condition changed after the March 28, 2022, event and that the symptoms were completely different than the prior chiropractic symptoms that he was asked about. (PX 1 pp. 24-25) Dr.

Gornet commented that Dr. Lee's records indicated a change in her symptoms after the March 28, 2022, incident and that the symptoms at that time were from the L5-S1 level as opposed to the L2-3 level. (PX 1 p. 26) Dr. Gornet believed that the change in symptoms reflected an L5-S1 injury as opposed to the previously existing L2-3 degeneration.

Deposition of Dr. Jesse Butler

Dr. Jesse Butler testified by deposition on behalf of the Respondent, he is a board-certified orthopedic surgeon. (RX 3) His practice is concentrated in Central Illinois. He performs 240-250 IMEs per year. (RX 3 p. 9) He examined Petitioner on September 20, 2023. Petitioner provided Dr. Butler with the history of an accident on March 28th, 2022, where she was standing in a flex position for 20- 25 minutes, bent over at 90 degrees at the waist. She felt a pop in her low back when she got up and she had pain that went down to her feet and numbness and tingling down her leg with pain in her low back. (RX 3 p. 14) Dr. Butler read Petitioner's MRI's as normal at the L5-S1 level. (RX 3 p. 16) He diagnosed Petitioner with a Lumbar Strain. He attributed the lumbar strain to the Petitioner's March 28, 2022, incident. (RX 3 p. 18) Dr. Butler compared the incident that Petitioner described on March 28, 2022, to putting on your pants and your shoes and socks. (RX 3 p. 18) He did not find any structural pathology to suggest that surgery was appropriate. (RX 3 p. 24) Dr. Butler opined that the initial emergency room evaluation and the initial MRI scan were necessary. (RX 3 p. 27) He did not note any signs of symptom magnification in Petitioner's presentation. (RX 3 p. 29) Dr. Butler does about 90% of his Workers' Compensation exams on behalf of Respondents. (RX 3 p. 32) Dr. Butler has done a number of examinations over the years with the attorneys at Respondents law firm. (RX 3 p. 33). Dr. Butler does believe the lumbar sprain was from the March 2022 accident. (RX 3 p. 34) Dr. Butler does not believe that the L2-3 disk was the cause of Petitioner's pain but was unsure if the L5-S1 disk was causing pain (RX 3 p. 36)

Medical Records

Medical records from Petitioner's work accident were admitted into evidence. Petitioner's Exhibit 6 are the medical records from SSM Health Good Samaritan Mt. Vernon Emergency Room dated 3/28/22. In those records, Petitioner gave a history of "This began abruptly at work today. She was bending over working with a patient while assisting a dentist she works for and when she stood up, she felt something snap in her back and had the sudden onset of severe pain. She tried to give the pain time to subside but after lunch she could no longer bear the pain and came in for further evaluation." On page 10 of Petitioner's Exhibit 6 the clinical impressions at the emergency room were acute right sided low back pain with right sided sciatica, and strain of lumbar paraspinal muscle initial encounter. A CT was performed at the initial emergency room visit as well.

Petitioner's Exhibit 4 are the medical records of Thomas K. Lee, MD, an orthopedic specialist located in Chesterfield, MO. Petitioner initially saw Dr. Lee on 3/29/2022, the day after her work incident. Her history to Dr. Lee stated "she is a dental assistant they are very short staffed. She works bent over, sitting in a chair twisted. She was standing bent over for thirty minutes, she went to stand and felt a pop with a sense of locking. She made it to lunch time, made it to the lunchroom but when she tried to return, she was unable to stand." In the initial history she reported to the doctor that she had an issue in January of 2022 where she was placed on a muscle relaxer. She took the muscle relaxer for three days and was good since then and she was able to do her normal activities without any recurrence. Dr. Lee reviewed the CT scan taken

at SSM Health Good Samaritan in Mt. Vernon and read it to show a notable disc herniation finding at L5-S1. He believed that Petitioner needed an MRI. Dr. Lee saw Petitioner on May 10, 2022, after she had her MRI. He believed the MRI showed signal alteration suggesting possible annular disruption at the L5 S1 level. Dr. Lee provided Petitioner off work slips from the time of her initial visit.

Dr. Matthew Gornet's medical records are Petitioner's Exhibit 3. His visit of January 12, 2023, contains the same history as given to the other treating physicians and providers in this case. She was bending over at an awkward angle while working for Respondent for a long period of time. She twisted and came up and felt a pop in her back and over the next few hours the pain became more severe. On page 3 of Dr. Gornet's January 12, 2023, office note, he states that there is structural disc pathology present at L5-S1 that is best seen on image 11 of 21 of the 4/23/22 MRI. His impression was that the March 28, 2022, accident at work was the cause of her current complaints and he believed it to be "fairly clear cut." (PX 3). Dr. Gornet's records also include an operative report from his May 10, 2023, discogram, which showed a provocative disc at L5-S1.

Dr. Helen Blake's medical records are contained in Petitioner's Exhibit 5. Dr. Blake's records include a February 14, 2023, epidural steroid injection at the L5-S1 level, as well as a February 28, 2023, epidural steroid injection at the L2-3 level.

Petitioner's Exhibit 7 contains medical records from Good Samaritan and Dr. Seth Hahs from Petitioner's January 2022 complaints of low back pain. These appear to reflect all of the treatment Petitioner received in January 2022 regarding any low back problems.

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 pursuant to the provisions of the Illinois Workers' Compensation Act, a claimant bears the burden of showing by a preponderance of the competent evidence, that she has sustained a disabling injury which arose out of and in the course of her employment with the employer. *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 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 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 be reasonably be expected to perform incident to his or her assigned duties,” *Id.*

Where “the injury results from a hazard to which the employee would have been equally exposed apart from the employment, or a risk personal to the employee, it is not compensable.” *Caterpillar Tractor Co. v. Industrial Comm’n* 129 Ill. 2d 52, 59, 541 N.E.2d 665, 667 (1989). However, an injury does arise out of the claimant’s employment if he or she “is exposed to a risk common to the general public to a greater degree than other persons.” (Emphasis added.) *Id.* “Such an increased risk may be either quantitative, such as some aspect of employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *Metropolitan*, 407 Ill. App 3d at 1014, 944 N.E.2d at 804.

Petitioner testified that while working as a dental assistant on March 28, 2022, she was assisting the dentist in performing a cleaning of a patient. She testified that the setup of the room and the location of the instruments required her to stand for 15 or 20 minutes while doing suction on the patient. She was bent over at approximately a 90-degree angle for 15 to 20 minutes straight. This was an awkward position and not a position she was required assume all of the time for every patient. When the suction was no longer required Petitioner straightened up, felt a pop in her low back and immediately had pain in her low back and numbness and tingling all the way down her right leg. She believed the pain would get better and worked through another patient or two until lunch. During lunch, her pain increased, and she was unable to stand up after her lunch break.

Petitioner’s awkward position bent over at a 90-degree angle for 15-20 minutes is substantially different than the activities of daily living example used by Respondent’s Section 12 Examiner of bending over to tie one’s shoe. Standing in an awkward position for 15-20 minutes and twisting as you come out of that position substantially increases the risk of injury.

The pop, pain, and numbness down Petitioners’ right leg was different than pain she had experienced in the past and caused Petitioner to immediately seek medical care on the date of the incident. Dr. Gornet related her current symptoms to her March 28, 2022, work incident. Dr. Butler thought that Petitioner sustained a lumbar strain. Both experts agree that Petitioner sustained an injury related to her March 28, 2022, incident but vary on the degree and type of injury. Based on the totality of the evidence, the Arbitrator finds and concludes that Petitioner sustained accidental injuries which arose out of and in the course of her employment with Respondent.

ISSUE (E): Was timely notice of the accident given to Respondent?

Petitioner and the Respondent both testified that the Petitioner called Dr. Samadzai on his lunch break at 1:48 pm and reported that she injured herself while working on patient J. W. In addition, Respondent Exhibit 7 contains several text messages between Petitioner and Respondent’s wife and office manager, Terry. In those text messages, Petitioner states that there was a pop in her low back and she experienced pain unlike any she had experienced in the past and that she was reporting this as a work-related accident.

Based on this evidence, the Arbitrator finds and concludes that timely notice was given to Respondent by the Petitioner.

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

Petitioner admitted during her testimony that she had seen a chiropractor in the past for "low back discomfort and pressure". Respondent included Petitioner's prior chiropractic records which go through 2018.

Petitioner noticed low back pain in January 2022 after her workday for Respondent. She went to the emergency room and was given an oral steroid and muscle relaxers. Petitioner testified that she felt better following her treatment in January 2022 until her March 28, 2022, work accident.

After Petitioner's incident on March 28, 2022, she immediately went to SSM Good Samaritan Hospital in Mt. Vernon. She gave a history consistent with her testimony at hearing and consistent with the history that she gave every other medical provider of being in an awkward position for 15 to 20 minutes, standing up, twisting, feeling a pop and immediate onset of low back pain with numbness and tingling into her right leg. She then treated with her family physician Dr. Hahs who referred her to Dr. Lee in St. Louis. Petitioner gave Dr. Lee the same history regarding the March 28, 2022, incident. Dr. Lee reviewed an MRI which he ordered, and he interpreted it to show pathology at the L2-3 level as well as pathology at the L5-S1 level. As a result of those findings Dr. Lee referred Petitioner to Dr. Helen Blake who performed epidural steroid injections on Petitioner.

Petitioner was next seen by Dr. Matthew Gornet an Orthopedic Spine Surgeon. Dr. Gornet opined that Petitioner's accident caused an acute injury at the L5-S1 level. Dr. Gornet credibly testified that Petitioner's complaints before March 28, 2022, appeared to involve the L2-L3 level. His physical examination and review of the MRI confirmed a new acute injury at the L5-S1 level.

Respondent had Petitioner examined by Dr. Jesse Butler, a Spine Surgeon located in Central Illinois, who has performed several examinations on behalf of the Respondents attorney over the years. Dr. Butler performs over 200 Section 12 examinations every year with the vast majority being at the request of Respondents. Dr. Butler testified that Petitioner suffered a lumbar sprain on March 28, 2022, and that going to the emergency room was reasonable. Dr. Butler testified that the act of bending over as described by Petitioner was the equivalent of bending over to tie a shoe and therefore, he did not believe that the Petitioner's condition of ill-being was causally related to that activity.

Circumstantial evidence, especially when entirely in favor of the petitioner, is sufficient to prove a casual 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. Comm'n* 260 Ill. 2d 469, 397 N.E.2d 834 (1979); *Gano Electric Contracting v. Indus. Comm'n*, 260 Ill.App3d 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).

Petitioner was able to perform her job for Respondent prior to March 28, 2022. As a result of her accident of March 28, 2022, Petitioner was no longer able to perform her job duties.

The Arbitrator is not persuaded by the opinions of Dr. Butler that the Petitioner's activities of bending over at a 90-degree angle for 15 to 20 minutes is the equivalent of tying one's shoes, especially given the fact that when Petitioner straightened up, she twisted and felt an immediate pop with pain, tingling, and numbness down her right leg. Dr. Gornet and Dr. Butler both agree that Petitioner's prior symptoms appeared to be coming from the L2-3 level, but the Arbitrator finds the testimony of Dr. Gornet to be more persuasive. Dr. Gornet opined that Petitioner's current symptoms appear to be from an acute injury at the L5-S1 level.

Based upon the totality of the evidence, the Arbitrator finds and concludes that Petitioner's current conditions of ill-being in her lumbar spine at the L5-S1 level are causally connected to her injury on March 28, 2022.

ISSUE (J): *Where the medical services that were provided to Petitioner necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical care?*

ISSUE (K): *Is Petitioner entitled to prospective medical care?*

Upon establishing causal connection and the reasonableness and necessity 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 included 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.E2d 18 (2001).

Respondent has already paid for the emergency room visit of March 28, 2022, at SSM Good Samaritan Hospital in Mt. Vernon, IL. The testimony of Dr. Gornet and Respondent's Section 12 Examiner Jessie Butler confirmed the March 28, 2022, treatment was reasonable and necessary as a result of the Petitioner's injury of March 28, 2022. Petitioner's medical bills are contained in Exhibit 9. In addition to the SSM Good Samaritan bill previously mentioned there are medical bills for Dr. Thomas Lee in the amount of \$1, 127.00 for treatment rendered between March 29, 2022, and May 10, 2022, bills from The Orthopedic Surgery Center of Creve Coeur, Dr. Helen Blake in the amount of \$2,238.41, and the bills of Dr. Matthew Gornet in the amount of \$22,790.00.

Based on the finding as to causal connection and Dr. Gornet's persuasive testimony, the Arbitrator finds and concludes that Petitioner is entitled to the foregoing medical expenses. Respondent shall therefore pay the medical expenses outlined in Petitioner's group Exhibit 9 pursuant to the Illinois medical fee schedule as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for the initial emergency room visit of 3/28/22. Respondent shall

hold Petitioner harmless for any claims by any providers of the services for which Respondent claims a credit.

The Arbitrator finds and concludes that Petitioner is entitled to receive prospective medical care as recommended by Dr. Matthew Gornet related to her lumbar spine including the disc replacement at L5-S1. Therefore, Respondent shall authorize and pay for the treatment recommended by Dr. Matthew Gornet including the disc replacement surgery at L5-S1 and associated follow up care.

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

Petitioner has been off work from March 29, 2022, through the date of hearing December 10, 2024. During that time, Petitioner has not worked in any capacity and has received no payment from Respondent for any period of temporary total disability. Dr. Gornet opined that Petitioner has been temporarily total disabled from the date of the accident until his deposition was taken and presumably thereafter since no treatment has been rendered to Petitioner and her symptoms remain the same.

On cross examination, Respondent attempted to show that Petitioner has placed ads on Facebook for a business that is operated by her husband, including butchering services and firewood. Petitioner does not participate in that business, does no work for the business, and is not paid by that business. The Arbitrator places very little weight on the fact that Petitioner placed Facebook ads for her husband's business. She is not a participant in that business and the Arbitrator does not find this to be concurrent employment that would negate entitlement to TTD benefits. As a result, the Arbitrator orders Respondent to pay temporary total disability benefits to Petitioner for the period of March 29, 2022, to December 10, 2024, representing 141 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC019280
Case Name	Roberto Perez v. Setna iO
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0401
Number of Pages of Decision	15
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Frank Kress
Respondent Attorney	Kelly Kamstra

DATE FILED: 9/25/2025

/s/Carolyn Doherty, Commissioner

Signature

24 WC 19280

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

Roberto Perez,
 Petitioner,

vs.

NO: 24 WC 19280

Setna iO,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed under Section 19(b) of the Act by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 24, 2025, 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.

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.

September 25, 2025

O: 09/24/25

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	24WC019280
Case Name	Roberto Perez v. Setna iO
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Gerald Napleton, Arbitrator

Petitioner Attorney	Frank Kress
Respondent Attorney	Kelly Kamstra

DATE FILED: 3/24/2025

/s/ Gerald Napleton, Arbitrator
Signature

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

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)

Roberto Perez

Employee/Petitioner

v.

Setna, IO

Employer/Respondent

Case # **24** WC **019280**

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 **Gerald Napleton**, Arbitrator of the Commission, in the city of **Waukegan**, on **January 6, 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, **May 24, 2024**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident *was 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 **\$12,500.00**; the average weekly wage was **\$1,250.00**.

On the date of accident, Petitioner was **67** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of **\$0.00** 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

Petitioner did not sustain an accident that arose out of and in the course of his employment with Respondent and did not provide timely notice of his accident. All other issues are moot and all benefits are denied.

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

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

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

/s/ Gerald W. Napleton **March 24, 2025**
Signature of Arbitrator

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Roberto Perez,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 24 WC 019280
Setna, IO,	)	
	)	
	)	
Respondent.	)	

ADDENDUM TO ARBITRATION DECISION

FINDINGS OF FACT

Petitioner testified that he was employed by Setna IO (hereinafter Respondent) as a custodian. Arbitration Transcript (TX P 6). Setna IO is a company that buys and sells airplane parts. *Id.* As part of his job, Petitioner was in charge of cleaning bathrooms, the cafeteria, cubicles and offices. *Id.* at 7. Petitioner would mop, clean windows and wipe down cafeteria tables. *Id.* Petitioner was hired on March 18, 2024. *Id.* He also stocked the bathroom, breakroom and cleaning supplies in the office. *Id.* at 23. Petitioner testified on cross examination that he was the only custodian hired for the building. *Id.* at 24. This was contradicted by Respondent’s witness, Janelle Weber.

On May 24, 2024, Petitioner testified he was in the locker room area of the gym when he was injured. *Id.* at 8. Petitioner explained that this area is where he would receive deliveries and sort out the boxes of inventory to deliver to each cubicle. *Id.* This is also the area where he collects office garbage before taking it outside. *Id.*

Petitioner alleges that on May 24, 2024, one of the managers, Monica, asked Petitioner to move a pallet of boxes so that pictures could be taken in the locker area. *Id.* at 9. He alleges he was instructed to hide these boxes in a nearby closet and then replace them once the pictures were done. *Id.* Petitioner alleges that while he was bringing the boxes back out, he heard a popping noise in his neck and felt pain. *Id.*

When asked about the boxes themselves, Petitioner described them as Amazon boxes containing various office and cleaning supplies. *Id* at 10. Petitioner testified that these boxes weighed 15-20 pounds each. *Id*. He further explained that he would move each box to a dolly and then move several of them at a time into the closet area. *Id*. The boxes on the dolly weighed approximately 70 pounds. *Id* at 11. On re-direct, Petitioner testified that his records were incorrect stating that each box did not weigh 70 pounds individually. *Id* at 40. When questioned on cross examination about moving all of these boxes, Petitioner stated he had to move them everywhere going so far as to say that he even had to walk to offices across the street. *Id* at 35.

Petitioner testified that this incident occurred at 3:25 P.M. He was adamant about that specific time because, “The pain that I had that day, it was a pain really bad [sic]. So, I notice the time because, what it is, *I’ve been injured at work before, and I know what I have to do*. I have to let my boss know and I have to check the time and that’s what I did.” *Id*. That same day, Petitioner testified that he told Ms. Janelle Weber about his injury. *Id* at 12. When he approached Ms. Weber’s office, Petitioner claims Ms. Weber was on the phone. *Id*. Petitioner testified that he got Ms. Weber’s attention, reported the accident, and Ms. Weber told him to call his doctor. *Id* at 14. On cross examination, Petitioner confirmed that he never provided Respondent with any work status slips or medical records regarding his treatment. *Id* at 33-34. He did not go to an urgent care clinic or ER that day. *Id* at 36.

Regarding the issue of accident reporting, Petitioner on re-direct testified that he kept asking for the papers from Respondent. *Id* at 41. On re-cross, Petitioner was asked specifically when he requested workers’ compensation paperwork. *Id*. After some back and forth, Petitioner stated he followed up on Monday, May 27, 2024. *Id* at 42. He further testified he followed up several more times for paperwork but could not recall how many times or what days he made the request. *Id* at 43. Petitioner stated he wanted the paperwork so “I could get workers’ comp to pay for things that my insurance doesn’t want to pay [sic].” *Id* at 44.

Petitioner testified that his neck pain was affecting his hand. *Id* at 16. He reported to Dr. Vo that he skipped work due to his neck pain. *Id* at 31. On cross

examination, he confirmed that he only missed one day from work, May 29, 2024, due to his neck pain. *Id* at 32.

Petitioner was terminated by Respondent on July 1, 2024. *Id* at 17. On cross examination, Petitioner testified that he was terminated via text message from Ms. Janelle Weber. *Id* at 23. Further, Petitioner and Ms. Weber communicated via text messages during his time working for Respondent. *Id* at 24. Petitioner felt disrespected at being fired stating, "I think I deserve a little more respect. Talk to me, you know, a phone call, saying: You know, you got fired because of this. Not just: You're fired. You don't have to come in." *Id*. Petitioner affirmed that during this conversation with Janelle Weber, Petitioner did not report a workplace accident. *Id* at 25.

He testified that his neck pain was affecting him constantly. *Id* at 22. He could not move his neck well and cannot grab things like he used to. *Id* at 21. Petitioner rated his pain as a 4-5 out of 10. *Id*. He further stated that when he takes medication, the pain decreases. *Id*. Petitioner did disclose he was involved in a motor vehicle accident in 2020 and sustained a concussion. *Id*. Petitioner also had a prior workers' compensation injury involving his lumbar spine in 2018. *Id* at 22. During hearing Petitioner did not report any lumbar problems or symptoms.

Medical Treatment

Petitioner testified that the day of his accident, he called his doctor Dr. Narendra Garg. TX at 14. Dr. Garg has been Petitioner's primary care physician since 2020. *Id* at 15. Dr. Garg is affiliated with doctors.com. *Id*. Per Petitioner, he calls Dr. Garg and is given the medication so he can pick it up at a pharmacy. *Id*. Petitioner testified that he called Dr. Garg on May 24, 2024, had a telehealth appointment and was prescribed medication that day. *Id* at 15-16. On cross examination, Petitioner was questioned about this visit and he could not provide an office visit note from this appointment and could not remember what medication he was prescribed. *Id* at 26. On re-direct, Petitioner was afforded the opportunity to look up on his phone what

medication he was prescribed, and Petitioner could not find that information. *Id* at 38.

Petitioner had a telehealth appointment with Dr. Garg on July 16, 2024. *Id* at 17. This was Petitioner's last appointment with Dr. Garg. *Id*. Petitioner claims that Dr. Garg referred him to Vital Rehabilitation for physical therapy. *Id* at 28. Petitioner admitted that a Dr. Schumacher is his primary care physician. *Id* at 28. Petitioner testified he never sought treatment with Dr. Schumacher for this injury. *Id*. A work status note from July 16, 2024, states petitioner has been treating with Dr. Garg for a "medical condition." PX 1 P13. He was treating for back pain after lifting some boxes. *Id*. Petitioner was referred to his primary care physician for further care. *Id*.

Petitioner was then seen at Vital Rehabilitation on July 18, 2024. *Id* at 18. Petitioner admitted medical records from Vital Rehabilitation. (Petitioner's Exhibit "PX" 1). Contained in those records is an undated note authored by Tom Kokocinski, PT authorizing Petitioner off work for two weeks for neck and low back pain. PX 1 at 37. The note does not specify which two weeks Petitioner was authorized off work. *Id*. Petitioner completed a pain chart, where he indicated right side neck pain, radiating through his elbow and into his right hand. He also marked low back pain. *Id* at 11. On a patient information form, Dr. Schumacher referred Petitioner to Vital Rehabilitation. *Id* at 46. No medical records from Dr. Schumacher were admitted at trial.

At his first appointment with Vital Rehabilitation, Petitioner reported lifting heavy boxes for a few days. *Id* at 55. Petitioner attended 9 physical therapy sessions from July 18, 2024, through August 9, 2024. On July 29, 2024, Petitioner reported muscle stiffness, soreness, and pain in his low back and glutes, right greater than left. PX 1 P23. On July 31, 2024, Petitioner reported increasing neck pain and right hip pain that caused him to limp. *Id* at 20.

Petitioner began treating with Dr. Vo at Advanced Pain and Back Institute on July 22, 2024. *Id*. Dr. Vo is a pain management physician. *Id* at 29. At that initial appointment, Petitioner reported his history of accident. *Id* at 30. Because he knew how important it is to report that information. *Id*. Petitioner reported he injured his

neck and low back after lifting about 50 boxes weighing 70 pounds each. PX 2 P17. Petitioner reported to Dr. Vo that he had been off work for two weeks by his primary care physician. *Id* at 30. Petitioner claims he was authorized off work by a physician at Vital Rehabilitation. *Id* at 31. Petitioner on cross examination was adamant that he informed Dr. Vo about his prior low back injury. *Id* at 32. However, his treatment records from July 22, 2024, indicate specifically that, “Prior to this day, he never ah any neck or back pain.” PX 2 P14. He also reported skipping work due to this pain. *Id* at 18.

On August 5, 2024, Petitioner presented with low back and right hip pain. PX 2 P14. A lumbar MRI and right hip x-ray were both ordered. *Id*. These reports were not admitted at hearing. Petitioner was authorized off work for four weeks. *Id*. Petitioner reported that his low back pain started the same day as his neck pain. *Id*.

On August 7, 2024, a cervical MRI revealed baseline narrowing of the vertebral canal due to congenitally short pedicles. Minimal broad-based levocurvature of the cervicothoracic spine, degenerative changes in the cervical and thoracic spine, including right facet arthropathy at C3-4 with mild facet and periarticular soft tissue edema. Moderate to severe right neural foraminal narrowing at C5-6. PX 3.

Petitioner has not treated with an orthopedic physician for his neck. *Id*. His last appointment with Dr. Vo was on August 19, 2024. *Id*. Dr. Vo recommended a cervical steroid injection at that time. *Id*. Petitioner does not have any future appointments scheduled because his personal insurance will not cover the treatment. *Id* at 30. Petitioner was authorized off work for four weeks. PX 2, P 11.

Testimony of Ms. Janelle Weber

Ms. Weber testified on behalf of Respondent. She is the Chief Culture Officer at Setna, IO. *Id* at 45. As part of her job as Chief Culture Officer, Ms. Weber is involved with on-boarding new employees, HR duties, engaging in morale, planning events and making sure the office is a nice environment for people to work at every day. *Id* at 46. She is also involved in both hiring and terminating employees. *Id* at 47. Setna, IO is a business that buys and sells commercial airline parts. *Id* at 46. They

house some parts at their warehouse. *Id.* They are located in a 200,000 square foot space comprising of mostly warehouse space with some offices, a cafeteria, and a gym. *Id.* Approximately 170,000 square feet of space is their warehouse. *Id.* at 47.

Ms. Weber hired Petitioner as a custodian for Respondent on March 18, 2024. *Id.* at 48. She was his supervisor. *Id.* at 51. As part of his job, Petitioner was in charge of tidying the gym area, keeping the cafeteria clean and keeping the offices maintained. *Id.* at 48. Petitioner was not the only custodian employed with Respondent. *Id.* at 48. They hired a third-party company that came twice a week in the evening to handle all of the warehouse, bigger projects and areas that were not being completed by Petitioner. *Id.* Petitioner's work schedule changed during his time with Respondent to address both his needs and the needs of Respondent to have work completed. *Id.* at 49. Petitioner was responsible for stocking snacks in the kitchen area. *Id.* These items were ordered every week via Amazon and included items like popcorn and granola bars. *Id.*

If Petitioner needed to lift heavy items, he had access to push carts, dollies and other assistance. *Id.* at 50. Petitioner was not required to lift 70 pounds; he was not required to lift 50 pounds. *Id.* When discussing the boxes Petitioner moved on May 24, 2024, Ms. Weber clarified that pallets would not be held in their locker room. *Id.* at 55. In fact, a forklift carrying a pallet would not fit in the locker room. *Id.* at 56. Respondent also has a 20-person shipping department who handles these types of deliveries. *Id.*

Ms. Weber reiterated that she communicated with Petitioner via text messages while he was an employee at Setna, IO. *Id.* Text messages were admitted at hearing containing the conversations Ms. Weber had with Petitioner from March 18, 2024, through Petitioner's termination on July 1, 2024. *Id.* (Respondent's Exhibit "RX" 1). These texts contain conversations about ordering materials, completing tasks, changing work hours and ultimately Petitioner's termination. RX 1. These text messages do not mention any workplace injury. RX 1, TX at 52. They do not contain any requests for accident paperwork. *Id.* They do not contain any information about medical treatment, time off requests or any pain complaints. *Id.* Ms. Weber testified

that she was never informed of any workplace accident by Petitioner. *Id* at 52. Respondent has procedures in place for reporting workplace accidents. *Id*. Ms. Weber explained that as Petitioner's supervisor, he would report any workplace accident to her. *Id* at 53. Petitioner did not request any assistance in obtaining medical treatment. *Id*. Ms. Weber found out about Petitioner's alleged accident from an email regarding the case after Petitioner's termination. *Id* at 54.

Petitioner was terminated by Respondent on July 1, 2024. *Id*. He was not a good fit for the company. *Id*. Ms. Weber called Petitioner informing him of the termination. Following that phone call, he texted her about work. *Id* at 54-55. Ms. Weber again informed Petitioner of his termination via text. *Id* at 55. During this conversation, Petitioner did not report any workplace accident or injury either verbally or via text. *Id*.

Regarding an in-person conversation with Petitioner on May 24, 2024, Ms. Weber did not recall such a conversation. *Id*. She contends she was not having any argument over the phone on that day. *Id* at 57. She further testified that Petitioner did not follow up with her about anything on May 27, 2024. *Id*. On cross-examination, she was questioned whether it was possible she forgot or was distracted when Petitioner tried to report his workplace accident. *Id* at 59. Ms. Weber said it was possible, but not probable, especially if someone is reporting an injury. *Id* at 60. She further testified she would not forget an entire conversation with someone. *Id* at 61. She testified she did not speak with Petitioner at all on May 24, 2024. *Id*.

CONCLUSIONS OF LAW

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 their 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).

Petitioner argues that the medical records in the evidence are consistent with Petitioner's testimony. This is only true insofar as the Petitioner eventually gives a history of moving boxes which caused back pain. The act of moving boxes, regardless of whether it is several boxes or one, and experiencing pain as a result is a competent mechanism of injury but as the *McDonald* case states, if a claimant's testimony is inconsistent with his/her actual behavior and conduct, the Commission has held that an award cannot stand. 39 Ill. 2d 396 (1968).

The Arbitrator noted several inconsistencies with Petitioner's testimony. It is worth noting that Petitioner had a prior workers' compensation claim before the Commission and should be aware of the importance of reporting a prompt and accurate history of accident to employers and medical treaters.

Petitioner's testimony is contradicted by what he told his medical providers. In a similar vein, the medical records do not corroborate Petitioner's testimony. He first claimed that he sought treatment on May 24, 2024, yet he could not provide any medical note, prescription, or work status slip to confirm this appointment. Petitioner was afforded the opportunity to review his phone and still could not find this information. Medical records from Dr. Garg were not admitted at hearing.

Petitioner also contradicted his history of accident. At trial he described moving boxes on May 24, 2024, and that each box weighed 15-20 pounds. TX at 10. He used a dolly to move several boxes at once. *Id.* While moving these boxes back he felt a pop and pain in his neck. *Id.* Yet to his providers he reported moving 50 boxes each weighing 70 pounds. PX 2 P17. And at his first physical therapy appointment,

he reported moving these boxes for several days. PX at 55. It is also at physical therapy where he mentions injuring his lumbar spine during this same incident. PX1 at 55. At no point during this hearing, did Petitioner mention injuring his lumbar spine, seeking treatment for his lumbar spine, or having any ongoing issues with his lumbar spine. Further, Petitioner reported to Dr. Vo that he had no prior back complaints. This conflicts with Petitioner admitted having a prior workers' compensation claim involving his low back.

Petitioner was terminated by Respondent on July 1, 2024. By Petitioner's own admission, he felt disrespected by this decision, "I think I deserve a little more respect. Talk to me, you know, a phone call, saying: You know, you got fired because of this. Not just: You're fired. You don't have to come in." TX at 24.

The Arbitrator also views Petitioner's text message colloquy with his Supervisor, Ms. Weber, to be persuasive evidence against finding Petitioner to be a credible witness. The texts never mention a work injury despite Petitioner claiming he repeatedly advised Ms. Weber of his injury and that he was looking for medical care to be covered by his employer.

All of this is compounded by the fact that Petitioner's medical treatment prior to his termination was minimal and only after termination did he seek restrictions from work, physical therapy, and injections. Additionally, Petitioner's Application for Adjustment of claim did not happen soon after his accident but months later after his termination.

Petitioner's testimony is not corroborated by the medical records or anything else. Weighing the inconstancies between Petitioner's trial testimony against his medical records and the text messages in evidence, the Arbitrator finds that Petitioner's testimony is less credible than the other evidence presented at trial.

Accordingly, regarding the issue of accident, this Arbitrator finds that since Petitioner's testimony is less credible than the other evidence presented at trial, that no accident arising out of and in the course of Petitioner's employment occurred on May 24, 2024. Based upon the totality of the evidence presented at hearing, Petitioner failed to establish that a workplace accident arose out of and in the course

of his employment with Respondent on May 24, 2024. This Arbitrator finds that the lack of accident reporting, the lack of medical documentation, the credibility issues with Petitioner's testimony, and the credible testimony of Ms. Weber demonstrate that Petitioner failed to meet his burden of proof.

While the Arbitrator's finding on accident renders all other issues moot, the Arbitrator notes that Petitioner failed to provide adequate notice of his alleged injury pursuant to the requirements outlined in the Workers' Compensation Act. The Act asserts that injured employees must report their alleged workplace injuries within 45 days of the accident or knowledge of the accident. 820 ILCS 305/6(c).

In this case, Petitioner is alleging that he reported his accident directly to Ms. Janelle Weber in her office on May 24, 2024. Ms. Weber denies this conversation took place. Ms. Weber was clear in her testimony that she often spoke with Petitioner at the office. TX at 55. However, she did not speak with Petitioner on May 24, 2024. TX at 59. She testified that Respondent takes office safety seriously and that she would recall having a conversation with an employee about a workplace accident. TX at 55. Petitioner asserts that he followed up with Ms. Weber regarding accident paperwork, yet could not provide any record of that communication, he could not say how many times he followed up nor on what days he followed up with Ms. Weber. TX at 43. Petitioner also admitted during his testimony that he did not provide any medical documentation to Respondent despite knowing that he needed to under the Act. TX at 33-34. Petitioner also continued working following this alleged accident. TX at 32. The text messages admitted at hearing did not contain any accident report, did not contain communications regarding medical treatment, or petitioner's ability to work. RX 1.

Accordingly, based on the entirety of the credibly evidence in the record, the Arbitrator finds that Petitioner did not provide sufficient notice of his alleged workplace accident as required under the Act.

All other issues are moot. All benefits are denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC017492
Case Name	Efrain Camacho v. W.E. O'Neil Construction
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0402
Number of Pages of Decision	18
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	David Figlioli
Respondent Attorney	Brian Raterman

DATE FILED: 9/26/2025

/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)
☒ Modify Average weekly wage, TTD	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

EFRAIN CAMACHO,

Petitioner,

vs.

NO: 23 WC 17492

W.E. O'NEIL CONSTRUCTION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by both Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's current condition of ill-being is causally related to the April 22, 2023 accidental injury, the appropriate wage calculation and benefit rates, entitlement to medical expenses, as well as prospective medical care, and entitlement to temporary disability benefits, and being advised of the facts and law, modifies the Decision of the Arbitrator as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill. 2d 327 (1980).

FINDINGS OF FACT

The Commission adopts the Findings of Fact as set forth in the Decision of the Arbitrator and incorporates such facts herein.

CONCLUSIONS OF LAW

I. Average Weekly Wage

Our supreme court has noted that §10 of the Act provides four methods for calculating average weekly wage:

“(1) By default, average weekly wage is ‘actual earnings’ during the 52-week period preceding the date of injury, illness, or disablement, divided by 52.

(2) If the employee lost five or more calendar days during that 52-week period, ‘whether or not in the same week,’ then the employee’s earnings are divided not by 52, but by ‘the number of weeks and parts thereof remaining after the time so lost has been deducted.’

(3) If the employee’s employment began during the 52-week period, the earnings during employment are divided by ‘the number of weeks and parts thereof during which the employee actually earned wages.’

(4) Finally, if the employment has been of such short duration or the terms of the employment of such casual nature that it is ‘impractical’ to use one of the three above methods to calculate average weekly wage, ‘regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness, or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.” *Sylvester v. Industrial Commission*, 197 Ill. 2d. 225, 230-31 (2001).

The Arbitrator herein found that the third calculation method for average weekly wage was appropriate for the case at bar. The Arbitrator noted Petitioner’s testimony that he worked 40 hours per week, except when there was inclement weather, or a holiday. He did not work regular or mandatory overtime. The Arbitrator found that Petitioner’s total non-overtime wages equaled \$26,437.04. The Arbitrator found that Petitioner worked 16 weeks for Respondent prior to injury. The Arbitrator divided Petitioner’s wages by the 16 weeks worked, and calculated that average weekly wage equaled \$1,652.32. However, the Arbitrator noted that Respondent’s alleged average weekly wage amount of \$1,745.73 on the *Request for Hearing* form surpassed that calculation, thus Respondent was bound by this amount. See *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004).

Initially, the Commission notes that, upon reviewing the evidence and Petitioner’s paystubs, he actually worked 15 weeks for Respondent, rather than the 16 found by the Arbitrator.¹ Next, we note our agreement with the Arbitrator’s finding that the third calculation method for average weekly wage should be adhered to in this case. The first two methods each require a claimant to be employed for a period of 52 weeks prior to the date of injury, and are clearly not applicable in this case. See *Sylvester* at 230. The record reflects that Petitioner was employed by Respondent for less than 52 weeks prior to the April 22, 2023 injury. Moreover, the fourth method

¹ The weeks of 12/26/22 to 1/1/23, and 4/10/23 to 4/16/23 have 2 pages each in *PX 1*, p.1-2, 15, 16.

also does not apply here, as neither party herein claims that Petitioner was employed for such a short time prior to his injury that it would be impractical to use the third method. Accordingly, we find that the third method for calculating average weekly wage is appropriate in the instant case.

Transitioning to the calculation itself, we note that the earnings statements provided as evidence in the record reveal that during the 15 weeks Petitioner was employed by Respondent, he worked 503 hours. Petitioner also provided unrebutted testimony that he worked five days per week—a schedule which would only be compromised by inclement weather or a holiday. The earnings statements also show that Petitioner earned a total of \$26,437.03 in non-overtime earnings during his employment with Respondent prior to the date of accident. Although Petitioner testified he would occasionally work an extra day on Saturday, he indicated that this was voluntary and not mandatory. Thus, his overtime earnings are not relevant in this calculation. See *Airborne Express, Inc. v. Illinois Workers' Compensation Commission*, 372 Ill. App. 3d 549, 554-55 (1st Dist. 2007) (Overtime hours worked that were not required as a condition of employment are excluded from the calculation of a claimant's average weekly wage).

The Commission finds that dividing the gross wages earned by Petitioner prior to injury (\$26,437.03) by the number of calendar weeks in which he earned the wages (15) is improper. See *Peoria Roofing and Sheet Metal Co. v. Industrial Commission*, 181 Ill. App. 3d 616, 620 (3rd Dist. 1989) (“Such a method of computation strains the meaning of the phrase ‘number of weeks and parts thereof’ as it ‘effectively equates all calendar weeks during which the [claimant] did any work, regardless of how many days he worked during the week.’”). The court in *Peoria Roofing* went on to state that one isolated day worked in a calendar week is not a week worked, but a fractional “part thereof.” See *Id.* at 620. The Commission acknowledges that the court in *Peoria Roofing* was applying the second method for calculating average weekly wage under §10 rather than the third method we are invoking herein, but we find that the phrase “number of weeks and parts thereof” has the same meaning—and thus a similar calculation—in the third method as it does in the second. See *Greaney v. Industrial Commission*, 358 Ill. App. 3d 1002, 1017-18 (1st Dist. 2005).

Pursuant to the third method of calculating average weekly wage, the claimant's earnings of \$26,437.03 must be divided by the “number of weeks and parts thereof” during which he actually earned wages prior to his injury. “When...a claimant is a full-time employee, scheduled to work a full work week, and his average weekly wage is to be determined by applying the third method set forth in section 10, the number of days that a claimant worked prior to his injury should be divided by the number of days in a full workweek to arrive at the ‘number of weeks and parts thereof’ by which the claimant's pre-injury wages are to be divided.” *Greaney* at 1018.

The Commission notes that the earnings statements offered in Petitioner's Exhibit 1 only provide the pay period dates and the pay date for each week Petitioner worked, and not the actual days or dates worked by Petitioner. Given the lack of information provided in the record, it is difficult to determine the number of days worked by Petitioner. However, his unrebutted testimony is that his workday usually began at 8a.m., with a half-hour for lunch, and ended at 4:30p.m. This equates to an 8-hour workday. Dividing the 503 hours Petitioner worked prior to the injury by the 8-hour workday gives us 62.875 days worked during the 15 weekly pay periods prior to his injury. As noted above, Petitioner's work week was five days. Dividing the days worked by a five day workweek equals 12.575 (62.875/5).

Based on the above calculation, we find that Petitioner worked 12.575 weeks for Respondent prior to the instant accident. Dividing his earnings of \$26,437.03 by the 12.575 weeks and parts thereof worked yields an average weekly wage of \$2,102.35. We modify the Arbitrator's calculation of Petitioner's average weekly wage accordingly.

II. Temporary Total Disability

A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Westin Hotel v. Industrial Commission*, 372 Ill App. 3d 527, 542 (1st Dist. 2007). In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement, and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission*, 236 Ill. 2d 132, 142, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Industrial Commission*, 138 Ill. 2d 107, 118 (1990).

Regarding the right knee, the Arbitrator noted Dr. Sompalli took Petitioner off work on June 29, 2023 and returned him to work with restrictions on June 19, 2024 at MMI. Regarding the low back, neither Dr. Yehya nor Dr. Salehi took Petitioner off work. Dr. Neckrysh did, but he was not a treating physician. Accordingly, the Arbitrator found TTD should be terminated on June 19, 2024, in concert with Petitioner's right knee MMI designation.

Here, the parties agree that Petitioner is entitled to temporary total disability ("TTD") for the period of August 17, 2023 through May 18, 2024. However, Petitioner alleges that benefits should be extended through the trial date of October 28, 2024, as his right knee condition has yet to stabilize. We agree.

After the stipulated accident and subsequent right knee surgery on September 13, 2023, Petitioner's right knee condition improved, but was never fully absolved of symptomatology. A May 8, 2024 right knee MRI revealed mild retropatellar chondromalacia, chondral loss of the femoral trochlea, chondral loss of the medial greater than lateral compartment of the knee, osteochondral abnormality of the medial femoral condyle, mild ACL and MCL sprains, tendinosis, complex tear of the lateral meniscus with a meniscal cyst, complex tear of the medial meniscus, and a partially ruptured medial popliteal cyst.

On May 16, 2024, Petitioner's complaints persisted. Upon examination, Dr. Sompalli opined Petitioner's ongoing pain was due to chondromalacia and moderate arthritis. He recommended a right knee Synvisc one injection and took Petitioner off work. The record reflects that Respondent did not authorize the injection, and on June 19, 2024, Dr. Sompalli opined Petitioner had reached maximum medical improvement ("MMI") for his right knee, and released him from care with permanent work restrictions of no lifting over 20 pounds, no bending, no squatting, and no traversing stairs.. Petitioner contends that Dr. Sompalli's release was a product of Respondent refusing to authorize the Synvisc injection, rather than a true indication that Petitioner's right knee condition had stabilized.

Upon review of the evidence and the chronology of Dr. Sompalli's opinions, the Commission finds merit in Petitioner's argument. Between the May 16, 2024 visit with Dr.

Sompalli and the June 19, 2024 amended note, there is nothing in the record indicating any change in Petitioner's condition. The only development in the interim was Petitioner's un rebutted testimony that Respondent did not authorize the injection. Thus, we find that Dr. Sompalli believed further treatment could improve Petitioner's condition, but when said treatment was denied, there was no further avenue for Dr. Sompalli to turn, prompting him to release Petitioner with permanent restrictions. Without approval for the injection, the next step in treatment could not be reached. Likewise, since the recommended medical procedure in the form of an injection was denied, there is insufficient evidence that Petitioner's condition had stabilized. In the absence of a finding that Petitioner's condition had stabilized, there can be no appropriate determination of MMI.

With no documented change in Petitioner's condition subsequent to Dr. Sompalli's "off work" designation on May 16, 2024, Petitioner remains entitled to TTD benefits through the date of trial. Even if we were to adhere to the permanent restrictions recommended by Dr. Sompalli on June 19, 2024, Petitioner would still be entitled to TTD benefits through the date of trial, since Respondent was no longer accommodating light duty at the time. We modify the Arbitrator's ruling and find that Petitioner did not reach MMI as of June 19, 2024, and remains entitled to TTD benefits through the date of trial. The MMI finding with respect to Petitioner's right knee is hereby vacated.

Lastly, consistent with the modification of Petitioner's average weekly wage, the calculation of the weekly TTD benefit rate is also modified. With Petitioner's average weekly wage being \$2,102.35, we find that his weekly TTD rate is \$1,401.57.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 30, 2025, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay outstanding reasonable and necessary medical expenses in the amount of \$54,457.55, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the MMI finding with respect to Petitioner's right knee is hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,401.57 per week for a period of 62 & 5/7ths weeks, representing August 17, 2023 through October 28, 2024, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b), this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent shall have a credit of \$45,388.98 for benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for prospective medical care in the form of an MRI of the lumbar spine and an L4-5 transforaminal lumbar interbody fusion recommended by Dr. Salehi as provided in §8(a) 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, but only after the latter of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

September 26, 2025

RAW/wde

/s/ *Raychel A. Wesley*

O: 8/6/25

/s/ *Frank J. Soto*

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/s/ *Carolyn M. Doherty*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC017492
Case Name	Efrain Camacho v. W.E. O'Neil Construction
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Elaine Llerena, Arbitrator

Petitioner Attorney	David Figlioli
Respondent Attorney	Martin T. Spiegel

DATE FILED: 1/30/2025

/s/Elaine Llerena, Arbitrator
Signature

INTEREST RATE WEEK OF JANUARY 28 2025 4.14%

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

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

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

Efrain Camacho

Employee/Petitioner

v.

W.E. O'Neil Construction

Employer/Respondent

Case # **23 WC 017492**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Elaine Llerena**, Arbitrator of the Commission, in the city of **Chicago**, on **October 28, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **April 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 *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.

Petitioner's average weekly wage was **\$1,745.73**.

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

Respondent shall be given a credit of **\$45,388.98** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$45,388.98**.

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 \$1,163.82 per week for 44 weeks, commencing August 17, 2023, through June 19, 2024, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services of \$54,457.55, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for prospective medical care in the form of an MRI of the lumbar spine and a L4-5 transforaminal lumbar interbody fusion as recommended by Dr. Sean Salehi pursuant to Sections 8(a) and 8.2 of the Act.

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

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

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



Signature of Arbitrator

JANUARY 30 2025

FINDINGS OF FACT

This matter proceeded to hearing on October 28, 2024, in Chicago, Illinois before Arbitrator Elaine Llerena. The issues in dispute were causal connection, average weekly wage, medical expenses, temporary total disability benefits, and prospective medical care. Arbitrator's Exhibit 1 (AX1).

Job Duties

Petitioner worked as a journeyman carpenter for Respondent on April 22, 2023. (T. 8) As a journeyman carpenter, he would put up walls with metal beams to get the decks going. (T. 12) The walls were concrete, and he would use pieces of forms and brackets to frame out the concrete walls. (T. 12-13) Petitioner had to lift the brackets and forms. (T. 13) The brackets weighed about 90 pounds and the forms weighed about 100 pounds. *Id.* Petitioner described his work as 100% physical labor. *Id.* His job required the use of hammers, wrenches and wrecking bars. (T. 13-14) During an eight-hour workday, he would spend all day walking, standing, bending or twisting. (T. 14) When putting up bars, he would climb the walls to make boxes for the beams. (T. 14-15)

By April 22, 2023, Petitioner had worked for Respondent for about five months and is a member of Local number One of the Carpenters Union. (T. 8) The hourly wages as a journeyman carpenter were set by the collective bargaining agreement in effect. *Id.* His normal workday was eight hours, starting at 8:00 a.m., half-hour for lunch and finish around 4:30 p.m. (T. 9) Petitioner worked five days per week and sometimes worked Saturdays. *Id.* When Petitioner worked on Saturdays it was voluntary. *Id.* The only time that he worked less than 40 hours in a week was when it rained or was nasty out and Respondent did not work on holidays. (T. 10) Petitioner also did not work one day because he had to go to court. *Id.* Petitioner identified Petitioner's Exhibit 1 as the majority of his pay stubs for the hours he worked in December 2022 through April 23, 2023. (T. 11) Petitioner worked for Respondent for five months. (T. 10-11)

Accident

On April 22, 2023, Petitioner started working in the basement moving brackets from windows. (T. 15-16) The brackets, called blue brackets, are used to support the windows while the concrete sets. (T. 16) Petitioner identified Petitioner's Exhibit 11 as three photographs showing blue brackets made of steel which were 24 inches tall and 16 inches wide. (T. 16-17) The brackets weigh about 600 pounds. (T. 17)

Petitioner was working on a scissor lift with a coworker. (T. 18) They were trying to move the blue brackets using a wrecking bar that is like a large crowbar. (T. 41) Once the bracket was loose from where it was on top of the concrete, they tried to move it onto the scissor lift by sliding it back and forth with the wrecking bar. *Id.* Once the bracket came loose, Petitioner and his coworker grabbed it. (T. 41-42) Petitioner explained there were initially three people working to remove the bracket, but one of the workers was removed. (T. 42) Only Petitioner and one coworker were lifting the bracket when the accident occurred. *Id.* Petitioner and his coworker began to pull the bracket out and as they were lowering it, Petitioner's right knee twisted, and he dropped the bracket down onto the floor of the lift. (T. 19-20) The bracket did not strike any part of Petitioner's body. (T. 44)

Following the accident, Petitioner couldn't feel his body and felt a lot of pain in his arms and legs. (T. 20) He then began feeling warm mostly in his back and knees and felt a lot of pain. (T. 21) Petitioner was sent to the on-site nurse who gave him pills for the pain. (T. 21) Petitioner's right knee began to swell, and he was sent home. (T. 22)

Summary of Medical Records

On April 22, 2023, Petitioner went to the emergency room at LaGrange Hospital. (PX2) Petitioner was seen by Larry Foster PA-C who noted Petitioner reported that he was carrying an object with a coworker and fell onto his right knee. Petitioner further reported that his knee was wrapped at work, and he was told to ice it, but it did not help. X-rays of the right knee showed no acute fracture. Foster diagnosed Petitioner as having right knee sprain and contusion. Foster applied a knee immobilizer, referred Petitioner to see an orthopedic and released Petitioner to return to work, without restrictions, on April 25, 2023.

On April 25, 2023, Petitioner saw Dr. Hamada Yehya, a chiropractor, at La Clinica. (PX4) Petitioner complained of right knee and lower back pain following an injury at work. Petitioner indicated that he was carrying a large piece of metal with a coworker when the coworker dropped the piece and it fell on his right knee, bending it backwards. Petitioner heard a popping sound and experienced severe pain. Petitioner reported that he was scheduled to work on April 26, 2023, but that he continued to have right knee and right lower back pain which extended to his right hip, especially when walking. Petitioner complained of pain at night which affected his sleep and pain after sitting or walking for 30 minutes. Dr. Yehya diagnosed Petitioner as having right knee cartilage injury and lumbar spine sprain/strain. Dr. Yehya took Petitioner off work and ordered physical medicine treatment consisting of active therapeutic exercises and passive physical modalities three times a week. Dr. Yehya opined that Petitioner's injury/condition was directly related to the April 22, 2023, work accident.

On April 27, 2023, Petitioner was sent to Physicians Immediate Care by Respondent. (PX3) Petitioner complained of right knee pain following a work injury on April 22, 2023, when he was lifting a 600-pound metal container with a coworker which placed too much pressure on his knee and back. X-rays of the right knee and back showed no fractures. Neha Vagadia PA diagnosed Petitioner as having a right knee sprain and low back pain, prescribed anti-inflammatory medication, and released Petitioner to return to work with the following restrictions: avoid prolonged sitting, standing, kneeling, squatting, bending over, twisting, jumping, running, and ladder climbing and no lifting, pushing or pulling more than 5 pounds. Petitioner followed up at Physicians Immediate Care on May 1, 2023, complaining of increased right knee and low back pain with movement. Petitioner also complained of radiation of pain up and down the right side of his back and leg. Vagadia adjusted Petitioner's medication, provided Petitioner crutches, ordered a right knee MRI, and continued his work restrictions.

On June 6, 2023, Petitioner underwent a right knee MRI, the results of which revealed a tear in the medial meniscal body extending to the junction with the posterior horn, shallow tear in the inferior articular surface of the posterior horn of the lateral meniscus, subtle short segment tear in the anterior horn of the lateral meniscus, fraying of the inner free margins of the anterior horn and posterior horn of the lateral meniscus, MCL sprain, mild to moderate diffuse articular cartilage thinning along the central weightbearing aspects of the medial femoral condyle and medial tibial plateau, localized moderate articular cartilage thinning along the inferior aspect of the trough of the femoral trochlea, minimal subchondral bone marrow edema in the medial weightbearing aspect of the medial tibial plateau compatible with bone contusion versus degenerative/reactive edema, small joint effusion, and small Baker cyst. (PX4)

Petitioner returned to Dr. Yehya on June 12, 2023. (PX4) Petitioner complained of ongoing right knee and lower back pain. Dr. Yehya reviewed the MRI and diagnosed Petitioner as having right medial meniscus tear, right MCL sprain, right knee contusion and lumbar spine sprain/strain. Dr. Yehya kept Petitioner on sedentary restrictions and ordered treatment in the form of therapeutic exercises, passive physical medicine modalities and manual therapy.

On June 29, 2023, Petitioner saw Dr. Chandrasekhar Sompalli at Elite Orthopaedics. (PX5) Petitioner complained of right knee pain following a work injury where he was carrying a 600-pound bracket with a coworker who slipped and fell, causing the bracket to fall on his right knee and twisting it. Dr. Sompalli reviewed the MRI and diagnosed Petitioner as having right knee pain, tear of the lateral meniscus and effusion in the right knee, sprain of the anterior cruciate ligament and complex tear of the medial meniscus of the right knee. Dr. Sompalli administered a cortisone injection to Petitioner's right knee, continued Petitioner's physical therapy and took Petitioner off work. Dr. Sompalli opined that Petitioner had a traumatic medial meniscal tear caused by his work injury. On July 7, 2023, Petitioner returned to Dr. Yehya complaining of ongoing right knee and lower back pain. (PX4) Dr. Yehya ordered a lumbar spine MRI and continued treatment.

On July 31, 2023, Petitioner underwent an MRI of the lumbar spine, the results of which revealed slightly right paracentral focal disc protrusion with annular fissure tapering less than 1 mm disc endplate marginal spur complex borderline bulging across the neuroforamen with right greater than left recess impingement at L4-5 and evidence of a 4mm prolapsing disc likely herniation with a 2 to 3 mm cranial component impinging the exiting nerve complex associated with moderate left, mild to moderate right neuroforaminal stenosis at L4-5. (PX4)

Petitioner returned to Dr. Sompalli on August 8, 2023, and reported that the cortisone injection provided relief for about a week. (PX5) Petitioner also reported that he was working with sit down restrictions. Dr. Sompalli noted Petitioner had active locking and giving away of the right knee and recommended a right knee arthroscopy, partial lateral meniscectomy and partial medial meniscectomy, along with a DVT unit and crutches. Dr. Sompalli suspended physical therapy as it was not working and kept Petitioner on desk duty.

On August 21, 2023, Petitioner saw Dr. Sean Salehi at Chicago Neurospine Surgery. (PX7) Petitioner reported sustaining a right knee injury at work on April 23, 2023, when he and coworker were lifting a bracket that weighed about 600 pounds and it fell onto his right knee. Petitioner felt immediate pain in his right knee and mid to low spine. Petitioner complained of constant pain in the lower thoracic region and across the low back. Dr. Salehi reviewed the July 31, 2023, MRI and diagnosed Petitioner as having intervertebral disc displacement in the lumbar region and pain in the thoracic spine. Dr. Salehi found that Petitioner had mid and low back pain as a result of the work injury and that his low back pain was secondary to the annular tear/disc herniation at L4-5 and recommended that Petitioner undergo 1-2 caudal injections, and continue physical therapy. Dr. Salehi also ordered an MRI of the thoracic spine.

On September 13, 2023, Dr. Sompalli performed a right knee arthroscopy, partial medial and lateral meniscectomy, microfracture of the OCD lesion of the medial femoral condyle using chondral picks, synovectomy in the medial and lateral compartments, chondroplasty of the femoral trochlea and patella in the patellofemoral joint, and PRP injection over the microfracture to promote healing. (PX6) On September 19, 2023, Dr. Sompalli ordered post-surgery physical therapy and kept Petitioner off work. (PX5)

Petitioner continued to follow up and treat with Dr. Yehya monthly from September 2023, through December 2023. (PX4) Petitioner reported improvement with his right knee condition, but continued pain in his lower back.

On October 11, 2023, Petitioner underwent an MRI of the thoracic spine, the results of which revealed thoracic dextroscoliosis and multilevel spondylosis, but no herniations or protrusions. (PX4) On November 8, 2023, Petitioner underwent an x-ray of the right knee that showed chondrocalcinosis with medial compartment arthrosis that appeared unchanged since the previous x-ray on April 25, 2023. (PX5)

On December 5, 2023, Dr. Xia Tian from Integrated Pain Management administered a therapeutic fluoroscopic guided bilateral L4-L5 transforaminal epidural injection. (PX8)

On January 8, 2024, Dr. Sompalli noted Petitioner had undergone 3.5 months of physical therapy and ordered work conditioning. (PX5) On January 17, 2024, Petitioner began work conditioning. On February 22, 2024, Petitioner reported continued pain he described as achy and burning and prolonged by walking and kneeling. Petitioner also reported radicular pain with episodes of numbness and tingling down the right lateral thigh to his knee. Dr. Sompalli noted that Petitioner had continued low back pain that continued to be his primary pain generator and that Petitioner asked for a referral for a second opinion. Petitioner returned to Dr. Salehi on January 16, 2024, complaining of continued pain in the mid back with bending or reaching and across the lower back. (PX7) Dr. Salehi reviewed the thoracic spine MRI and recommended that Petitioner follow up with ortho once he was cleared from his right knee treatment to undergo work conditioning and a functional capacity evaluation (FCE) to determine permanent restrictions to prevent further aggravation of his back condition.

On March 14, 2024, Petitioner saw Dr. Sergey Neckrysh at University Spine Surgeons, LLC for a second opinion. (PX9) Petitioner described the work accident and explained that he and a coworker were removing a 600-pound bracket from a window when it fell onto his knee, and he immediately felt pain in his right knee and his mid to low back. Dr. Neckrysh ordered an updated MRI and flexion and extension x-rays of the lumbar spine and kept Petitioner off work. On March 22, 2024, Petitioner underwent the lumbar spine x-rays, which showed no evidence of acute compression fracture or dislocation, mild degenerative change of the lumbar spine with multilevel small marginal endplate osteophytes and associated facet arthropathy. Petitioner also underwent the lumbar spine MRI on March 22, 2024, which showed mild lower lumbar degenerative change, L4-L5 mild focal central disc protrusion superimposed upon background degenerative changes, mild central canal encroachment, mild bilateral foraminal encroachment, and L5-S1 mild focal central disc protrusion. Petitioner returned to Dr. Neckrysh on March 28, 2024, who reviewed the diagnostic exams and ordered a discogram.

On April 29, 2024, Petitioner underwent a Section 12 examination (IME) by Dr. Kathleen Weber Respondent's request. (RX1) Petitioner described the April 22, 2023, work accident and explained that while he and a coworker were lifting a 600-pound bracket, the coworker slipped and the bracket struck Petitioner's right knee, causing it to twist. Dr. Weber examined Petitioner and reviewed his medical records and noted that Petitioner complained of continued right knee and low back pain. Dr. Weber diagnosed Petitioner as having right knee pain status post-surgery and a resolved lower back strain. Dr. Weber opined that Petitioner's current right knee and low back pain were not causally related to the work accident and noted that while Petitioner had subjective complaints they were not objectively supported. Dr. Weber noted that Petitioner had preexisting mild degenerative changes in the lumbar spine but found that they were not aggravated by the work accident. Dr. Weber further noted that the operative report documented chondromalacia in the femoral trochlea, patella and patellofemoral joint of Petitioner's right knee which were preexisting and not unusual in a person of Petitioner's age. Dr. Weber opined that the right knee surgery was appropriate but questionable if related to the work accident and that a lumbar strain would normally require a few weeks of physical therapy and Petitioner's lack of improvement regarding the low back made the longevity of the chiropractic treatment unreasonable and unnecessary and unrelated to the work injury. Dr. Weber determined that Petitioner had reached maximum medical improvement (MMI) as to the right knee and low back and that he could return to work without restrictions.

On May 8, 2024, Petitioner underwent another MRI of the right knee, the results of which showed mild retropatellar chondromalacia, mild diffuse chondral loss of the femoral trochlea with high-grade focal osteochondral abnormality of the lateral aspect of the femoral trochlea, mild to moderate chondral loss of the

medial greater than lateral compartment of the knee, osteochondral abnormality of the medial femoral condyle, possible chondrocalcinosis when correlated with radiographs, mild sprain of the ACL and MCL, extensor mechanism tendinosis and associated findings, stranding in Hoffa's fat pad which could relate to patellar tendon-lateral femoral condyle impingement and/or Hoffa's fat pad impingement, complex tear of the entire lateral meniscus with anterior horn lateral meniscal cyst, complex tear of the medial meniscus with centrally displaced small flap component, partially ruptured medial popliteal cyst, pes anserinus tendinosis and pes anserinus bursitis. (PX5)

On May 16, 2024, Petitioner complained of ongoing right knee pain which Dr. Sompalli found to be due to chondromalacia and moderate arthritis. (PX5) Dr. Sompalli recommended a Synvisc injection to the right knee. On June 19, 2024, Dr. Sompalli found that Petitioner had reached MMI regarding the right knee and released Petitioner to return to work with the following permanent restrictions: no lifting more than 20 pounds, no bending, no squatting and no going up and down stairs. Dr. Sompalli discharged Petitioner from care.

Petitioner followed up at Integrated Pain Management with Lindsey Johnson NP on June 24, 2024, who noted that Petitioner continued to have low back pain and that he could not recall if the injection helped him much. (PX8) Petitioner was to follow up with Dr. Salehi. On July 22, 2024, Johnson noted no change in Petitioner's condition and again indicated that Petitioner was to follow up with Dr. Salehi.

Petitioner returned to Dr. Salehi on August 5, 2024. (PX7) Petitioner reported that he had finished his right knee treatment and had been released by orthopedics. Petitioner complained of continued lower thoracic and low back pain which is exacerbated by certain activities, such as climbing stairs, and occasional numbness in the bilateral lateral thighs. Due to Petitioner's ongoing pain, Dr. Salehi recommended an L4-5 transforaminal lumbar interbody fusion. Dr. Salehi ordered a new lumbar spine MRI prior to surgery.

Petitioner continued to follow up at Integrated Pain Management as he awaited a new MRI and surgery. (PX8)

Petitioner's Current Condition

Petitioner testified that he struggles with doing basic things around the house. (T. 37, 39) Whenever he tries to bend down or kneel or move around, his knee hurts. *Id.* Petitioner explained that he is constantly having to take painkillers which mess with his stomach. *Id.* Petitioner struggles with anything having to do with lifting, cannot lift more than 30 pounds, and cannot just sit and take it easy because his back begins to hurt. (T. 37-38) However, when he starts moving again, he is also in pain. (T. 38) Petitioner has right knee pain when he walks, which becomes worse when he walks more than half a mile. *Id.* Petitioner cannot sit for more than 20-30 minutes before his back begins to hurt. (T. 39) Petitioner also reported to his doctor that he has upper back pain. (T. 39-40)

Petitioner worked light duty through August 15, 2023, when he was laid off. (T. 48) Petitioner applied for and started receiving unemployment benefits at the end of May 2024. (T. 49)

At the time of hearing, Petitioner had no appointments scheduled with any doctors for his right knee and his low back. (T. 61)

CONCLUSIONS OF LAW

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

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

The Arbitrator notes that 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 (1982) The Arbitrator further notes that Petitioner sought treatment for his right knee injury the same day as the accident, April 22, 2023. Additionally, Petitioner complained of low back pain on April 25, 2023, only a few days after the accident. There is nothing in the record to indicate that Petitioner sustained a second injury between April 22, 2023, and April 25, 2023. Petitioner consistently reported both right knee pain and low back pain following the April 22, 2023, work accident. Petitioner was also substantially consistent in his reporting of the work accident occurring while lifting a heavy bracket with a coworker. The Arbitrator further notes that Dr. Yehya opined that Petitioner's low back condition was directly related to the April 22, 2023, work accident, Dr. Sompalli opined that Petitioner had a traumatic medial meniscal tear caused by his work injury, and Dr. Salehi found that Petitioner had mid and low back pain as a result of the work injury.

The Arbitrator also notes that Dr. Weber opined that Petitioner's right knee and low back pain were not causally related to the work accident, noted that Petitioner had preexisting mild degenerative changes in the lumbar spine but found that they were not aggravated by the work accident, and further noted that the operative report documented chondromalacia in the femoral trochlea, patella and patellofemoral joint of Petitioner's right knee which were preexisting and not unusual in a person of Petitioner's age. However, the Arbitrator also notes that there is nothing in the record to indicate that Petitioner had any right knee or low back problems prior to the April 22, 2023, work accident. Further, the right knee and lumbar spine MRIs showed meniscal tears and lumbar disc protrusion and impingement. Therefore, based on the accident histories in the medical records, the objective diagnostic findings and Petitioner's lack of any right knee or lumbar spine problems prior to April 22, 2023, the Arbitrator finds the findings and opinions of Dr. Yehya, Dr. Sompalli and Dr. Salehi more persuasive.

Based on the above, the Arbitrator finds that Petitioner's conditions of ill-being as to his right knee and lumbar spine are causally related to the April 22, 2023, work accident.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that a claimant's average weekly wage is governed by Section 10 of the Workers' Compensation Act (Act), which reads:

The compensation shall be computed on the basis of the "Average weekly wage" which shall mean the actual earnings of the employee in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement excluding overtime, and bonus divided by 52; but if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of such 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed." 820 ILCS 305/10 (2013).

In *Sylvester v. Industrial Commission*, 197 Ill. 2d 822, 826 (2001), the Illinois Supreme Court noted that Section 10 of the Act provides four methods for calculating an injured employee's average weekly wage: (1) the employee's actual earnings during the 52-week period prior to his date of injury, excluding overtime and bonus, divided by 52; (2) if the employee lost 5 or more calendar days during the 52-week period prior to his date of injury, whether or not in the same week, then the employee's earnings are divided by the number of weeks and parts thereof remaining after the time lost has been deducted; (3) where the employment prior to the injury extended over a period of less than 52 weeks, the employee's earnings during that period are divided by the number of weeks and parts thereof during which the employee actually earned wages; and (4) if the employment has been of such short duration or the casual nature or terms of the employment make it impractical to use one of the three preceding methods of computation, regard shall be had to the average weekly amount which during the 52 weeks prior to the employee's injury was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.

The Arbitrator notes that Petitioner testified that he worked 40 hours per week every week with the exception of when it rained, was nasty out or on holidays. He did not work overtime regularly, and it was voluntary in nature. A review of his pay stubs (PX1) reveals that out of the 16 weeks that he worked for Respondent, he only worked a 40-hour week four times. As such, the Arbitrator finds that the method for calculating Petitioner's average weekly wage in this case is the third method of calculation. The Arbitrator notes that Petitioner earned \$26,437.04 during his 16 weeks of employment with Respondent, not including overtime. Following the third method of calculation, \$26,437.04 divided by 16 weeks, comes to \$1,652.32.

The Arbitrator further notes that Petitioner alleged an average weekly wage of \$2,093.60 while Respondent alleged an average weekly wage of \$1,745.73. (AX1) As Respondent alleged an average weekly wage of \$1,745.73, it is bound by its stipulation per *Walker v. Indus. Comm'n*, 345 Ill. App. 3d 1084 (2004).

Based on the above, the Arbitrator finds that Petitioner's average weekly wage is \$1,745.73.

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

The Arbitrator notes her finding above that Petitioner's conditions of ill-being as to his right knee and lumbar spine are causally related to the April 22, 2023, work accident. The Arbitrator further notes that Petitioner has undergone the treatment recommended by his treating physicians and while the treatments have provided some relief, the treatments have not resolved Petitioner's ongoing conditions of ill-being. Petitioner provided the outstanding medical expenses incurred in Petitioner's treatment for injuries sustained in the April 22, 2023, work accident, totaling \$54,457.55 as Petitioner's Exhibit 10. Respondent provided a medical bills payment log for the medical expenses it has paid in this matter, totaling \$94,626.97, as Respondent's Exhibit 2.

Based on the above, the Arbitrator finds that Respondent shall pay the outstanding medical bills, totaling \$54,457.55, as provided in Sections 8(a) and 8.2 of the Act. Respondent

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

The Arbitrator notes her finding above that Petitioner's conditions of ill-being as to his right knee and lumbar spine are causally related to the April 22, 2023, work accident. The Arbitrator further notes her finding that the opinions of Dr. Yehya, Dr. Sompalli and Dr. Salehi are more persuasive than those of Dr. Weber. On June 19, 2024, Dr. Sompalli found that Petitioner had reached MMI regarding the right knee and released Petitioner to return to work with permanent restrictions and discharged Petitioner from care. On August 5, 2024, Dr. Salehi noted Petitioner had finished his right knee treatment and had been released by orthopedics. He also recommended that, due to Petitioner's continued back pain, Petitioner should undergo an L4-5 transforaminal lumbar interbody fusion and a new lumbar spine MRI prior to surgery.

Based on the above, the Arbitrator finds that Respondent shall authorize and pay for prospective medical care in the form of a lumbar spine MRI and a L4-5 transforaminal lumbar interbody fusion as recommended by Dr. Salehi pursuant to Sections 8(a) and 8.2 of the Act.

WITH RESPECT TO ISSUE (L), WHAT AMOUNT OF COMPENSATION IS DUE FOR TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY AND/OR MAINTENANCE, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes her finding above that Petitioner's conditions of ill-being as to his right knee and lumbar spine are causally related to the April 22, 2023, work accident. The parties stipulated that Petitioner is entitled to temporary total disability benefits from August 17, 2023, through May 18, 2024. Petitioner additionally argues that Petitioner is entitled to temporary total disability benefits from May 19, 2024, through October 28, 2024. The Arbitrator notes that Dr. Sompalli took Petitioner off work on June 29, 2023, and released Petitioner to return to work, with restrictions, on June 19, 2024. Neither Dr. Salehi nor Dr. Yehya took Petitioner off work. Dr. Neckrysh took Petitioner off work, but he is not one of Petitioner's treating physicians, instead he provided a second opinion regarding Petitioner's ongoing lumbar condition.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from August 17, 2023, through June 19, 2024.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC021254
Case Name	Dawn Kirchhoff v. Edward-Elmhurst Health Center - 429 N York
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0403
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Zachary Kerska
Respondent Attorney	Bryan Strand

DATE FILED: 9/26/2025

/s/Carolyn Doherty, Commissioner

Signature

21 WC 21254

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

DAWN KIRCHOFF,

Petitioner,

vs.

NO: 21 WC 21254

EDWARD-ELMHURST HEALTH
 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, nature and extent, and other: evidentiary rulings, 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 writes to supplement the Arbitrator's Findings and Conclusions of Law, regarding the nature and extent of the injury. Specifically, the Commission finds that RX 7, the video evidence from August of 2022, demonstrates that Petitioner was able to work and physically function at a capacity beyond the 20-pound lifting restriction provided by Dr. Elboghdady on January 31, 2022. More importantly, RX 7 demonstrates that Petitioner was able to work and function at a capacity beyond the 7-pound lifting restriction provided by the April 19, 2022 FCE, which placed Petitioner at the sedentary work level and which was adopted by Dr. Manganelli on May 9, 2022. Additionally, the Commission notes that RX 8, containing video evidence from July and August 2024, further demonstrates that Petitioner continued to perform physical activities beyond the work restrictions provided in 2022. Accordingly, the Commission concludes Petitioner is not entitled to a loss of trade and affirms the Arbitrator's award of permanency of 16.5% loss of use of the person as a whole pursuant to Section 8(d)(2) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 21, 2025 is hereby affirmed and adopted.

21 WC 21254

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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 removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$71,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

September 26, 2025

O: 09/24/25

CMD/ma

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	21WC021254
Case Name	Dawn Kirchhoff v. Edward-Elmhurst Health Center - 429 N York
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	11
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Zachary Kerska
Respondent Attorney	Matthew Ignoffo

DATE FILED: 3/21/2025

/s/ Roma Dalal, Arbitrator

Signature

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

STATE OF ILLINOIS)
)SS.
 COUNTY OF DuPage)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

Dawn Kirchhoff

Employee/Petitioner

v.

Edward-Elmhurst Health Center

Employer/Respondent

Case # **21** WC **021254**

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 **Wheaton**, on **February 7, 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 **May 6, 2021**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$74,919.52**; the average weekly wage was **\$1,440.76**.

On the date of accident, Petitioner was **61** years of age, *single* with zero dependent children.

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

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

ORDER

Respondent agrees to hold Petitioner harmless regarding group health payments totaling \$1,020.10.

Respondent shall pay Petitioner permanent partial disability benefits of \$864.46/week for 82.50 weeks, because the injuries sustained to Petitioner's lumbar spine caused 16.5% 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.



Arbitrator

March 21, 2025

STATE OF ILLINOIS)
) SS
 COUNTY OF DUPAGE)

ILLINOIS WORKERS' COMPENSATION COMMISSION

Dawn Kirchoff,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 21 WC 021254
Edward-Elmhurst Health Center,	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on February 7, 2025 in Wheaton, Illinois before Arbitrator Dalal on Petitioner's Request for Hearing. Issues in dispute include causation and nature and extent. (Arb. Ex.1, T.5).

Dawn Kirchoff, (hereinafter referred to as the "Petitioner"), testified she was employed for Edward-Elmhurst (hereinafter referred to as the "Respondent") in May of 2021. (T.9). Petitioner was employed as a Medical Technologist for the past five years. (T.10). Petitioner was responsible for analyzing blood samples and other bodily fluids. (T.12). Petitioner stated she had to lift up to 50 pounds. In particular she would have to lift agents from an upper position on a shelf. (T.12). She was required to walk around the lab, open doors, coolers, and freezers in order to take out samples for testing or procedures that had to be done. (T.11-13).

On May 6, 2021, Petitioner testified she was required to open a freezer door that had been frozen shut. It required her to use her entire body weight to free the door. As a result of the force applied, Petitioner felt immediate pain in her lower back. She described it as "throwing out her back." She reported the incident to her supervisor and filled out an incident report. (T.13-14).

Petitioner subsequently sought out medical care at the Occupational clinic and was referred to an orthopedic physician. (T.15). Petitioner testified that at least one doctor recommended surgery. She recalled undergoing therapy, an epidural and undergoing a Functional Capacity Evaluation. (T.18).

Respondent attempted to accommodate Petitioner's restrictions. (T.19). Petitioner is now working for central scheduling for Edward-Elmhurst and helps schedule appointments. There is no heavy lifting in this new job. Petitioner testified she has to get out of her chair for at least five minutes out of every hour to move. (T.21).

Currently Petitioner still feels pain and continues to take over the counter medications and pain patches. Petitioner further noted that she does not get a good night sleep. (T.22).

Petitioner further noted that she cannot do normal housework such as vacuuming or picking anything off the floor. (T.23).

On Cross-Examination, Petitioner testified she drives a gray Nissan Ultima which was very difficult as she could not get out of the car. (T.27-28). Petitioner also reviewed surveillance video from August 7, 2022. The surveillance video was roughly 38 minutes. (T.30). Petitioner identified her car and noted she was at someone's house. (T.32). Petitioner initially indicated the woman in the video was asking Petitioner for her advise as gardening is one of her passions. (T.33). Petitioner acknowledged gardening takes a lot of manual work. Petitioner indicated that she would pre-medicate and wear patches prior to gardening. She also could only garden for a little bit, roughly 20 minutes. (T.34).

Petitioner confirmed she was standing up on the shovel and bending down to lift up plants that needed to be removed. (T.36). Petitioner stated she was removing roots. Petitioner stated this was not an easy task for her. (T.37). Petitioner testified she was probably screaming in pain. She normally would not do this, and only did it because she felt bad for the lady. (T.38-39). Petitioner loaded her trunk with the roots. (T.44). Petitioner later indicated she remembered this day and was in a lot of pain. (T.47). It was noted Petitioner was gardening for about 30 minutes (T.48).

Petitioner testified she has been gardening all her life. (T.53). She has a large gardening area in her home so she would pre-medicate. She can only go out for about 20-30 minutes and would then lay down (T.53).

Petitioner confirmed that the type of work she did in the video in 2022, she did not do at her own house in 2024. (T.55). Petitioner noted she does smaller plantings. (T.55). She also does not utilize a shovel and dig like she did in the 2022 video. (T.56).

Petitioner was then shown another surveillance video from August 2, 2024. In the video, Petitioner was utilizing the same shovel as she did two years prior. (T.57). Petitioner indicated she was bending over at the waist, working with a shovel, and removing plants. (T.59). Petitioner acknowledged she was gardening for about an hour. (T.62).

On redirect, Petitioner testified her doctor advised her to continue with physical activity. (T.64). Petitioner confirmed she still cannot carry anything above 25-50 pounds. (T.66). Petitioner testified she continues to perform her hobby of gardening despite the back pain. (T.67).

Medical Summary

On May 12, 2021, Petitioner presented to Dr. John Nowak at Elmhurst Occupational Health. The visit diagnosis was "pain." Petitioner was recommended physical therapy and provided medication. (PX1, p.24-26).

On May 19, 2021, Petitioner returned to Dr. Nowak. Lumbar x-rays indicated no significant fracture, grade 1 anterolisthesis of L5 in relation S1, and moderate multilevel spondylosis. (PX1, p.16).

On July 8, 2021, Petitioner underwent a lumbar MRI which revealed a partially imaged disc protrusion at T9-10 results in at least mild spinal canal stenosis and mass effect on the thoracic spinal cord, Bilateral L5 pars defects with six millimeters of anterolisthesis of L5 on S1; degenerative changes at L5-S1 contribute to moderate to severe bilateral neural foraminal stenosis; Multilevel degenerative changes of the spine without significant spinal canal stenosis at any level; Minimal left subarticular zone narrowing at L3-4. Mild bilateral subarticular zone narrowing at L4-5; a left foraminal disc extrusion at L3-4 contributes to mild right and severe left neural foraminal stenosis at L3-4; mild right and moderate left neural foraminal stenosis at L4-5; and facet arthropathy throughout the spine. (PX4, p.278).

On July 12, 2021, Dr. Yogen Patel performed a bilateral L3-4, L4-5 and L5-S1 injection with fluoroscopic guidance. The pre and post op diagnoses were facet syndrome, lumbar. (PX1, p.6).

On July 26, 2021, Petitioner presented to Dr. Kevin Jackson, a neurosurgeon, at Edward Medical Group with a chief complaint of low back pain and bilateral calf cramping. On May 6, Petitioner was pulling a lever on a freezer and felt back pain. Dr. Jackson diagnosed Petitioner with spondylolisthesis at L5-S1 and mechanical lower back pain. Dr. Jackson recommended a lumbar fusion surgery. (PX2, p. 34-39).

On July 29, 2021, Petitioner was seen by Jennifer Bren, PA who had complaints of low back pain. Petitioner was opening a freezer door that was stuck. Petitioner had been in therapy with minimal relief and presented for a second opinion. Petitioner was recommended a lumbar epidural injection. (PX3 p.228-236).

On August 24, 2021, Petitioner presented to Dr. Sachin Bansal at Castle Orthopaedics and Sports Medicine with a chief complaint of lower back pain. Petitioner gave a history of trying to open a freezer door that was frozen shut. Petitioner advised she was seen by occupational health and was then sent to a physiatrist, Dr. Patel, who indicated it was a muscle strain. Petitioner was sent to physical therapy. Petitioner stated she aggravated her sprain again on work on July 6, 2021, when she opened an emergency door. Petitioner stated she attempted six ultrasound guided cortisone injections which made her pain worse. Petitioner also underwent medial branch blocks. Petitioner is currently attending physical therapy. Dr. Bansal diagnosed spondylolisthesis and low back pain, told her to continue therapy, and put her on light duty work restrictions. He suspected pain was stemming from the spondylolisthesis rather than any disc protrusions. He did not see any indication for an epidural injection. (PX4, p.247-253).

On September 30, 2021, Petitioner presented to Dr. Paul Manganelli via telemedicine at DuPage Medical Group with chief complaint of low back pain now with left leg pain and weakness. Petitioner underwent a medial branch nerve block with zero efficacy. She was offered surgery. Petitioner's left leg symptoms were two weeks old. Petitioner was provided Ultram and recommended a lumbar epidural steroid injection. (PX3, p.215-218).

On November 3, 2021, Petitioner presented to Dr. Manganelli via telemedicine noting no relief from the lumbar ESI. Dr. Manganelli recommended a spinal surgery evaluation and trial of low dose Percocet. Therapy was to continue. (PX3, p.199-202).

On November 22, 2021, Petitioner presented to Dr. Islam Elboghady at DuPage Medical Group with chief complaint of lumbar pain. Petitioner rated her pain at 3/10. Petitioner was diagnosed with

spondylolisthesis and a lumbar strain. Dr. Elboghdady noted that improvement from surgery was about 30-50%. Petitioner was recommended continued conservative management with therapy. Petitioner could return to work with ten-pound restrictions. (RX5).

On December 2, 2021, Petitioner presented to Dr. Manganelli via telemedicine. She was not eager to “jump into surgery” as there was only a 50% chance of resolution. Petitioner asked for a refill of Percocet and stronger dosing. Dr. Manganelli referred her for a chiropractic treatment. (PX3, p.187-191).

On January 31, 2022, Petitioner returned to Dr. Elboghdady of DMG Orthopaedics for a follow up evaluation. Petitioner reported doing better since the last visit. She stopped therapy because she felt she plateaued. She was not interested in surgery as Dr. Elboghdady indicated results were not predictable. Dr. Elboghdady indicated he did not recommend surgery. Petitioner was to return to work with a 20-pound lifting restriction. (RX6).

On March 17, 2022, Petitioner presented to Dr. Manganelli via telemedicine and reported her leg pain had essentially resolved. She complained of axial back pain. Petitioner reported she will need a letter regarding MMI. Dr. Manganelli recommended completing an FCE and refilled her Percocet prescription. He was not recommending further interventions. A follow-up appointment was scheduled to occur after the FCE. (PX3, p.179-181).

On April 19, 2022, Petitioner presented for a functional capacity examination. Petitioner did not meet the demands of her previous job. It was noted Petitioner could return to work in the sedentary physical demand level. Petitioner demonstrated the inability to safely lift from floor height due to decreased squatting abilities. Petitioner demonstrated the ability to safely lift 7.0 pounds from waist-to-waist height; the ability to safely lift 4.5 pounds to shoulder height and 4.5 pounds overhead. Petitioner demonstrated the ability to safely carry 7.0 pounds, at waist height; pushing/pulling abilities were evaluated, and the client safely pushed 10.3 horizontal force pounds and pulled 9.2 horizontal force pounds respectively. Petitioner was to avoid bending, squatting and repetitive kneeling. (PX3, p.144-158).

On April 27, 2022, Petitioner presented to Dr. Manganelli via telemedicine in excellent spirits. She believed she would just need some modest accommodation with standing and walking in order for her to do her job. He was to review the FCE. (PX3, p.170-173).

On May 9, 2022, Dr. Manganelli agreed with the FCE findings and released Petitioner with permanent restrictions. (PX3, p.141).

On August 10, 2022, Petitioner returned to Dr. Manganelli complaining of low back pain. Petitioner was provided prescription medication. (PX3, p.159-162).

Surveillance of Petitioner

Video 1 – August 7, 2022

Respondent introduced a surveillance video into evidence. (RX7). Petitioner was filmed performing gardening around the exterior of a residential home for about 38 minutes.

The video shows her digging with a shovel, pulling plants out of the ground, carrying yard equipment, and carrying plants to the house. The plants were 1-2 feet in length. She was required to cut root and apply force to remove plants from the ground. She drove her own vehicle and appeared to be able to get in and out of it on her own.

Petitioner was seen carrying plants with her left arm. She was wearing some kind of sandals. Petitioner was seen bending into trunk and bending while gardening. Petitioner never looked like she was in any discomfort while repetitively bending. Petitioner also got into her car without any issues.

Video 2 – August 2, 2024

Respondent introduced a second video as exhibit 8. This video was about 1 hour 24 minutes long. It was also stipulated to. It showed Petitioner performing work similar to the video in 2022. This was maintenance of Petitioner's own yard. The same shovel was used in both videos. It also showed Petitioner bending at the waist, carrying boxes of plants, utilizing a shovel, and utilizing a wheelbarrow. (RX8).

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 and surveillance submitted into trial.

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

The Findings of Fact and Conclusions of Law, as stated above, are adopted herein.

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in her ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. "A

chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982). Prior good health followed by a change immediately following an accident allows an inference that a subsequent condition of ill-being is the result of the accident. *Navistar International Transportation Co. v. Industrial Commission*, 315 Ill. App. 3d 1197, 1205, 248 Ill. Dec. 609, 734 N.E.2d 900 (2000).

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).

In the instant case, the Arbitrator finds Petitioner's current condition of ill-being is causally related to her work accident. Petitioner sustained a compensable injury and reported the same. Petitioner was working full duty prior to the accident. Petitioner underwent a course of medical care and was released to permanent restrictions. The treatment records show a clear progression from the date of injury, physical therapy, injections through MMI from treatment by Dr. Jackson, Dr. Manganelli, Dr. Elboghdadi and Dr. Patel. The Petitioner was released with permanent restrictions after a valid FCE. On May 9, 2022, Dr. Manganelli agreed with the FCE findings and released Petitioner with permanent restrictions. The Arbitrator finds Petitioner reached MMI as of this date.

The Arbitrator does note that the surveillance entered into evidence does not comport with Petitioner's direct testimony and the FCE. Petitioner was observed gardening for a period of time. Petitioner's activities were outside her sedentary restrictions of lifting 4.5 pounds and avoiding bending, squatting and repetitive kneeling. While the Arbitrator also notes the surveillance does not allow Petitioner to return to work full duty and able to lift over 50 pounds, it definitely makes the FCE results questionable as Petitioner is seen acting outside sedentary work restrictions.

The Arbitrator finds Petitioner's trial testimony that she cannot do normal housework as inconsistent. Petitioner testified that vacuuming is rough, and picking things up from the floor is difficult, which was inconsistent from the surveillance video. In addition, after the initial surveillance video from 2022, Petitioner indicated she cannot do that kind of work at her own house. The Arbitrator finds the 2024 surveillance video to not only indicate Petitioner was performing the same work as she was performing in 2022, but for a longer period of time as the video depicts Petitioner performing over an hour of work at her home.

Regardless, the Arbitrator finds Petitioner reached maximum medical improvement as of May 9, 2022 with no need for future medical care.

With respect to Issue (L), what is the nature and extent of the injury, the Arbitrator finds as follows:

Consistent with the Illinois Workers' Compensation Act, the Arbitrator is to base the permanency determination on the following factors:

- i. The reported level of impairment pursuant to subsection (a) (e.g., the AMA rating)
- ii. The occupation of the injured employee
- iii. The age of the employee at the time of the injury
- iv. The employee's future earning capacity
- v. Evidence of disability corroborated by the treating medical records

No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of § 8.1b(b), the Arbitrator notes no party introduced an impairment rating at trial and as such, no weight is given to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner was employed as a medical technician. Petitioner testified Respondent attempted to accommodate her restrictions, but she later changed positions. The Arbitrator noted that the FCE results were questionable due to the surveillance. Given the original requirements of the job were more strenuous than her current job, the Arbitrator gives moderate weight to this factor based on the demands of Petitioner's original job duties.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes Petitioner was 61 years old on the date of this accident. The Arbitrator notes Petitioner has a shorter work life before her. Given the length of her estimated work life, the Arbitrator gives great weight to this factor.

With regard to subsection (iv) of § 8.1b(b), the Arbitrator notes no evidence was introduced by either party of any reduced earning capacity. As such the Arbitrator assigns no weight to this factor.

With regard to subsection (v) of § 8.1b(b), the Arbitrator notes Petitioner sustained a back injury. The medical records submitted into evidence show Petitioner underwent a bilateral L3-4, L4-5 and L5-S1 injection. One of Petitioner's physicians recommended surgery and one did not. Ultimately, Petitioner declined the same. Petitioner complained of significant complaints, however, the surveillance evidence did contradict some of the complaints.

Regardless, the Arbitrator notes that Petitioner sustained a back injury and cannot lift the 50 pounds that is required for her job. Respondent attempted to accommodate her restrictions; however, Petitioner left her employment and obtained a new job. The Arbitrator accords this factor great weight.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 16.5% loss of use of the person as a whole as

provided in §8(d)2 of the Act. Respondent shall pay Petitioner permanent partial disability benefits of \$846.46/week for 82.5 weeks.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC027215
Case Name	Blaine G. McBride v. State of Illinois - Illinois State Police, Dist #13
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0404
Number of Pages of Decision	13
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Devin Jones
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 9/26/2025

/s/Carolyn Doherty, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BLAINE MCBRIDE
 Petitioner,

vs.

NO: 22 WC 27215

ILLINOIS STATE POLICE,
 Respondent.

DECISION AND OPINION ON REVIEW

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

The Commission views the evidence differently and modifies the Arbitrator's Decision with respect to the issue of permanent partial disability, based on the following evaluation of the five factors outlined in Section 8.1b of the Act.

Regarding factor (i) Level of Impairment, the Commission gives no weight to this factor because an AMA rating is not in evidence.

Regarding factor (ii) Occupation, the Commission places greater weight on this factor because Petitioner was released without restrictions to his full duty job as a sergeant for the Illinois State Police. The Commission observes that the job of a police officer is one that is heavy in physical demand and also requires Petitioner to be able to pass gun and arrest/control tests.

Regarding factor (iii) Age, the Commission gives moderate weight to this factor because Petitioner was 52 years of age at the time of the accident, noting that Petitioner has fewer working years ahead of him than a younger individual.

Regarding factor (iv) Earning Capacity, the Commission places no weight on this factor noting there was no evidence of reduced earning capacity and Petitioner returned to his pre-accident employment.

Regarding factor (v) Disability, the Commission places greater weight on this factor because the evidence supports a finding that Petitioner had a good result after undergoing a single-level right L4-L5 microdiscectomy and decompression. Petitioner returned to full duty work as a sergeant five months after the surgery.

Based on the record as a whole, the Commission modifies the Arbitrator's Decision to find that Petitioner sustained permanent partial disability to the extent of 17.5% loss of use of the person as a whole or \$87,326.75 (87.5 weeks at a PPD rate of \$998.02) as result of the work accident on September 28, 2022.

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 8, 2025 is hereby modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay to Petitioner permanent partial disability benefits of \$998.02/week for a total of 87.5 weeks representing 17.5% loss of use of the person as a whole pursuant to Section 8(d)(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.

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.

September 26, 2025

O: 09/24/25

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	22WC027215
Case Name	Blaine G. McBride v. State of Illinois - Illinois State Police, Dist #13
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Devin Jones
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 4/8/2025

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

/s/ Bradley Gillespie, Arbitrator

Signature



April 8, 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF APRIL 8 2025 4.00%

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
 NATURE AND EXTENT ONLY**

BLAINE MCBRIDE

Employee/Petitioner

v.

ILLINOIS STATE POLICE DISTRICT #13

Employer/Respondent

Case # **22** WC **027215**

Consolidated cases: _____

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 **Bradley D. Gillespie**, Arbitrator of the Commission, in the city of **Collinsville**, on **02/06/2025**. By stipulation, the parties agree:

On the date of accident, **09/28/2022**, 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 **\$127,436.00**, and the average weekly wage was **\$2,450.69**.

At the time of injury, Petitioner was **52** years of age, *married* with **2** dependent children.

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

Respondent shall be given a credit of **\$0.00** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$all paid**.

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 \$**998.02**/week for a further period of **112.5** weeks, as provided in Section **8(d)2** of the Act, because the injuries sustained caused **loss to the Body as a whole of 22.5%** .

Respondent shall pay Petitioner compensation that has accrued from **11/22/2024** through **02/06/2025**, 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.

Bradley D. Gillespie

Signature of Arbitrator

APRIL 8 2025

Case No.: 22WC027215

On September 28, 2022, Petitioner arrived by car at SIH-Memorial Hospital of Carbondale for treatment of acute onset of right lower back pain that began suddenly while performing a bench press during his fitness test for the police department. (See PX 3 pp. 1, 6) Petitioner reported he felt something pull and pain radiating down his right leg to the great toe. (PX 3 p. 6) He reported any range of motion of the lower extremities was quite painful. *Id.*

Physical examination revealed tenderness to palpation about the right and midline low back, no buttocks or SI Joint tenderness. (PX 3 p. 9) A positive straight leg raising test on the right while lying down was noted. *Id.* An MRI was performed with and without contrast. A May 11, 2017, CT of the lumbar spine was used for comparison. The September 28, 2022, MRI result was interpreted as follows: 1) Focal right sub articular and far lateral foraminal disc herniation at L4-5 with resulting severe right L4 foraminal stenosis. 2) Other mild to moderate degenerative changes. There is no severe central canal narrowing and there is no abnormal enhancement or fluid collection. (PX 3 p. 12) The cauda equina is normal. Signal in the conus is also normal. *Id.*

Petitioner was diagnosed with a lumbar disc herniation and foraminal stenosis of the lumbar region. (PX 3 p. 14) He was referred to an orthopedic specialist and discharged on Toradol and Flexeril for pain control. (PX 3 pp. 13-14) Subsequently, Petitioner was evaluated by Dr. Matthew Gornet of The Orthopedic Center of St. Louis. (Tr. pp. 13-14)

On October 5, 2022, Petitioner followed up with Dr. Matthew F. Gornet at The Orthopedic Center of St. Louis. (PX 4A) Based upon Dr. Gornet's review of the September 28, 2022, MRI from Memorial Hospital Carbondale, he reported the following: MRI reveals a large lateral herniation obliterating the foramen on the right side at L4-5, best seen on image #13 of 15. *Id.* Mr. McBride has some mild other structural changes at 3-4 and 4-5 and even 5-1, but his symptoms fit best with the large lateral herniation. *Id.* In the Impression/Plan section of his note Dr. Gornet stated Petitioner has already tried oral Prednisone and is miserable. *Id.* He continued that Mr. McBride had objective weakness consistent with a foot drop and will require urgent surgery, and further stated he believes Petitioner's symptoms were related to his accident of September 20, 2022, in which walking on this uneven slope injured his disc, which then progressed in severity during the bench press maneuvers on 09/28/2022. (PX 4A) Dr. Gornet continued that Mr. McBride is temporarily totally disabled. *Id.* He prescribed Oxycodone 5s due to Petitioner's severe pain and placed him off work completely. *Id.* Dr. Gornet's plan was to request urgent surge(ry) with microdiscectomy L4-5 right. *Id.*

On October 7, 2022, Petitioner underwent microdiscectomy right L4-5 with decompression of right L4 and L5 foramina at the St. Louis Spine and Orthopedic Surgery Center. Pre and Post Operative diagnoses included: herniated disc bilateral right L4-5 and Right L4 radiculopathy. (PX 6) Anesthesia was provided by Premier Anesthesia. (PX 6) The Findings section states Petitioner had a large extruded disc herniation on the right in the far lateral position. (PX 6) It was removed in several large fragments as well as a subligamentous fragment x2 into the L4 root. *Id.* The herniation extended from the disc all the way to the pedicle level underneath the L4 root. *Id.* After the discectomy there were no further free fragments and the L4 nerve root mobilized nicely. *Id.* The field was dry when the tube was removed. Neuromonitoring at that time of L4 root revealed depolarization at 6 mA. (PX 6)

On October 20, 2022, Petitioner returned to The Orthopedic Center of St. Louis for a 2-week follow-up after undergoing microdiscectomy right L4-5 with decompression of right L4 and L5 foramina on 10/07/2022. (PX 4A) Allyson Joggeerst, P.A. reported that Petitioner had noted dramatic improvement in his right leg but continued to have some mild symptoms in his right leg that are resolving. *Id.* Clinical findings for this visit include the following: Lumbar

spine films (taken 10/20/2022) reveal preservation of the disc space. *Id.* There may be just a touch of collapse compared to the other disc spaces. *Id.* The Impression/Plan Section for this visit states Mr. McBride's wound is healing well. (PX 4A) There is some redness related to prep but no signs of infection in the surrounding tissues. *Id.* Stitches were removed. Mr. McBride was asked to continue to avoid any bending and to refrain from submerging the wound until all scabs are gone. *Id.* He was to continue the antibiotic until all scabs are gone. Mr. McBride remained temporarily totally disabled. *Id.*

After October 20, 2022, Petitioner was still in a lot of pain and required a walking cane and brace that was prescribed and fitted for support and no bathing, bending and lifting. (Tr. pp. 16-17)

On November 14, 2022, Petitioner presented to The Orthopedic Center of St. Louis for his six-week follow-up of his October 7, 2022, microdiscectomy right L4-5, with decompression of right L4 and L5 foramens. (PX 4A) It was noted that Petitioner's leg was doing well with dramatic improvement. *Id.* Exam showed 5/5 strength in all groups. Dr. Gornet recommended Petitioner continue his home exercise program and follow-up in 6-weeks with x-rays and a CT. *Id.* If all was well at that point, formal physical therapy could begin. *Id.* Mr. McBride remained temporarily totally disabled. (PX 4A)

On January 12, 2023, Petitioner presented to CT Partners of Chesterfield and underwent a CT scan of the Lumbar spine without dye. (PX 7) Following his CT scan, Petitioner returned to The Orthopedic Center of St. Louis for a three-month follow-up on his October 7, 2022, microdiscectomy right L4-5, with decompression of right L4 and L5 foramens. (PX 4A) Dr. Gornet reviewed Petitioner's lumbar spine films and felt that they revealed some mild loss of disc height at L4-5 and L3-4 but no evidence of instability. *Id.* Petitioner was said to be stable on flexion/extension views. *Id.* Dr. Gornet reviewed Petitioner's CT scan and he felt that it was of diagnostic quality. *Id.* The CT revealed loss of disc height present particularly at L3-4 and L4-5 with defects present in the inferior end-plate of L-4 as well as the superior end-plate of L-5. (PX 4A; PX 7) This appeared to have been present on the September 28, 2022 MRI. *Id.* No evidence of pathologic fracture or significant facet issues. *Id.* Dr. Gornet discussed his microdiscectomy, explaining that this procedure was for his radicular symptoms and that removing part of the structure will not make this segment stronger. (PX 4A) Petitioner was advised that some of his lower back pain may be structural in nature. *Id.* Dr. Gornet recommended a course of physical therapy for his lumbar spine for three times a week with follow-up in approximately two months. *Id.* Mr. McBride remained temporarily totally disabled. (PX 4A)

On January 16, 2023, Petitioner presented at SIH St. Joseph Memorial Hospital in Murphysboro, IL, for an initial physical therapy evaluation prior to starting physical therapy. (PX 9 p. 18) Petitioner underwent Starting on January 18, 2023, Mr. McBride underwent twenty-three physical therapy sessions between January 18, 2023 and March, 10, 2023. (See PX 9)

On March 16, 2023, Petitioner returned to The Orthopedic Center of St. Louis for his 5-month follow-up after undergoing microdiscectomy right L4-5 and decompression of his right L4 and L5 foramens. (PX 4A) Mr. McBride had completed physical therapy and was feeling

better. *Id.* He reported some intermittent low back pain, however it was tolerable. *Id.* Exam shows 5/5 strength in all groups. *Id.* Petitioner sought a trial of return to work full duty. (PX 4A) Impression/Plan for this visit stated that Petitioner was doing quite well and again he would like to try a trial of return to work full duty. *Id.* Mr. McBride was released on this date but was not placed at MMI. *Id.* He was scheduled to return for follow-up in approximately three to four months to monitor his progress. *Id.* Meloxicam 7.5 mg p.o. b.i.d. X 60 days and Cyclobenzaprine 10 mg p.o. q.h.s. X 60 days was dispensed in the office. (PX 4A)

On June 26, 2023, Petitioner returned to The Orthopedic Center of St. Louis for his 6-1/2 month follow-up after undergoing microdiscectomy right L4-5 and decompression of his right L4 and L5 foramens. (PX 4A) The office note for this date of service reflects Petitioner continued to slowly improve and was working full time. *Id.* He was still having some hip and buttock pain at times on the right, but this seems to be slowly getting better. *Id.* Petitioner was instructed to follow-up in two to three months. (PX 4A)

On October 26, 2023, Petitioner returned to The Orthopedic Center of St. Louis for his one year follow-up for his surgery. (PX 4A) The office note stated that Petitioner was working full duty. *Id.* He was still having significant structural back pain with increased bending, lifting, prolonged sitting or standing. *Id.* He was having to take occasional sick days and had lost work time due to this problem. *Id.* From Dr. Gornet's perspective, Petitioner felt that he was getting significantly worse. *Id.* Dr. Gornet's recommended a new scan for him and a follow-up with him. (PX 4A) He stated that Petitioner could continue to work full duty. Exam on this date showed 5/5 strength in all groups, but he was still getting increased low back pain to the right buttock, right hip and intermittently down his right leg. *Id.*

On January 22, 2024, Petitioner underwent MRI of the lumbar spine without contrast at MRI Partners of Chesterfield. (PX 8) On that date, Petitioner returned to The Orthopedic Center of St. Louis after approximately one year and three months following his surgery. (PX 4 A) Petitioner was still having structural back pain, particularly to the right buttock, right hip, and down his right leg. *Id.* The new MRI scan was reviewed. It is of diagnostic quality and revealed right sided structural disc pathology at 3-4, 4-5 and 5-1 with significant loss of disc height at 4-5. *Id.* This had significantly changed compared to his previous scan on September 28, 2022. *Id.* The foraminal herniation was gone on the right side. Comparison between the two scans show, Petitioner had a progression and loss of the disc height at 3-4, 5-1, and most significantly at 4-5. *Id.* At this point his condition was considered somewhat stabilized. (PX 4A) Dr. Gornet believed the continued stabilization might be due to the significant collapse at 4-5. *Id.* His recommendation was to follow-up in three to four months. *Id.* He allowed Petitioner to continue working full duty. *Id.* Dr. Gornet observed that he believed Petitioner was at increased risk for further treatment of his back, but for right now he was continuing to tolerate his symptoms. (PX 4A)

On May 6, 2024, Petitioner returned to The Orthopedic Center of St. Louis. (PX 4A) He was approximately one and a half years out following his surgery. Dr. Gornet stated Petitioner was now back to where he was in January, but still not back to his baseline prior to his injury of September 28, 2022. *Id.* At this time, Dr. Gornet thought that observation was the best course. *Id.*

He stated Petitioner could continue working full duty. *Id.* Another follow-up was scheduled in three to four months. (PX 4A) Dr. Gornet stated Petitioner is not at maximal medical improvement. *Id.*

On August 26, 2024, Petitioner followed up with The Orthopedic Center of St. Louis. (PX 4A) He was then approximately one year and ten months out from his surgery. Dr. Gornet stated that Petitioner still had a level of pain which had not returned to normal. *Id.* He described the pathology as significant from L3 to S1 and that Petitioner understood this. *Id.* Dr. Gornet stated that he believed Petitioner would require future care as a direct result of his injury even though he was trying to tolerate it at present. *Id.* Dr. Gornet's Work Slip for Petitioner on this date stated the patient was able to work full duty with no restrictions, and he was placed at maximum medical improvement. (PX 4A)

Petitioner's sleep was greatly affected as he did not sleep well at night. He purchased a new bed with a better mattress and the frame of the bed. The bed was mechanical and elevates. (TX p. 17)

Petitioner testified that he underwent physical therapy of three days per week. He testified that he was eager to get back to work and get back to his life as this was a very dark time for him. (Tr. p. 19) Petitioner testified that following his release to full duty it was difficult to sit in in his squad car. He testified that he would have to get out and stretch every 30 to 45 minutes. (Tr. p. 20) He testified that following his release to full duty performing his four annual firearm pistol and rifle qualifications in the prone and kneeling positions were very painful. (Tr. p. 21)

Petitioner testified that following his work injury of September 28, 2022, he was scheduled to take the master's sergeant promotion test in Springfield, Illinois on September 30, 2022. (Tr. p. 23) He testified that the medication he was on due to his pain caused him to have trouble performing the multiple choice and writing portions of the test. (Tr. pp. 24-25) Petitioner testified that although he could not definitively state that the circumstances of his injury caused him to not receive the promotion, but he felt like it was a factor. (Tr. pp. 25-26)

Petitioner testified that his ability to perform chores around the house including running a chainsaw, leaf blower and push mower were limited. (Tr. p. 28) Petitioner testified that he was limited in enjoying hobbies such as horseback riding, riding amusement park rides, jumping on a trampoline, tent camping on the ground and hitting balls to his son. (Tr. pp. 27-28)

Issue L: What is the Nature and Extent of the Petitioner's injuries to his lumbar spine?

The Arbitrator finds that the Petitioner provided credible testimony that was consistent with the medical documentation submitted into evidence.

1. Section 8.1b of the Act is applicable to this claim as the accident occurred after September 1, 2011. The Arbitrator must rely on the following factors as contained in Subsection (b) to

determine the level of permanent partial disability for Petitioner: (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. Analysis of the aforementioned factors is as follows:

- (i) No weight is placed on this factor as neither party provided an AMA rating for consideration.
- (ii) Petitioner continues to be employed in the same position and capacity with the Illinois State Police as he was prior to the work accident. The Arbitrator places some weight on this factor.
- (iii) Petitioner was 52 years old at the time of his injury. The Arbitrator places some weight on this factor.
- (iv) There is no direct evidence of diminished future earning capacity in the record. Petitioner is working full duty without restrictions. Petitioner's claim that the work accident impacted his ability to obtain a promotion is speculative. The testing occurs every two years and Petitioner has yet to be promoted, even after his recovery and full duty release. According to the Commission in *McDonald v. Zurich North America*, 26 ILWCLB 107 (Ill. W.C. Comm. 2018), if there is no evidence of a *negative* impact on Petitioner's future earning capacity, such a situation would constitute competent evidence that the injury did not diminish his future earning capacity. The Arbitrator places moderate weight on this factor.
- (v) Petitioner underwent a one-level lumbar microdiscectomy and decompression less than two weeks after his work accident. The accident was a progression of Petitioner's lumbar spine condition which worsened throughout September 2022. Leading up to the date of accident, Petitioner was treating with a chiropractor, taking prednisone, and may have received an injection. Petitioner offered extensive testimony as to his symptoms leading up to surgery. Following surgery, Petitioner completed physical therapy as expected. When he was nearing MMI, Petitioner experienced a reemergence of symptoms. Dr. Gornet obtained new imagining and identified collapse in the discs from L3-S1, including the operated level of L4-5, which had progressed since surgery. The doctor believes Petitioner may need future medical treatment, but specific recommendations have not been given. For now, the possibility of additional treatment is somewhat speculative. Dr. Gornet indicated Petitioner's symptoms were tolerable and should be observed for now. Petitioner testified that many of his hobbies have been adversely affected by this injury. He must now stand to take breaks more often and has to be careful in how

he bends. Petitioner has been released to full duty work for almost a year and was placed at MMI almost 6 months ago. He has yet to return to Dr. Gornet to discuss his symptoms or concerns.

After consideration of the foregoing factors, the Arbitrator concludes that Petitioner is now permanently partially disabled to the extent of 22.5% of the person as a whole for injuries sustained on September 28, 2022.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC016289
Case Name	James Emmett v. Village of Tinley Park
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	25IWCC0405
Number of Pages of Decision	18
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Randall Sladek
Respondent Attorney	Robert Luedke

DATE FILED: 9/29/2025

/s/Marc Parker, Commissioner

Signature

22 WC 016289

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

James Emmett,

Petitioner,

vs.

NO: 22 WC 016289

Village of Tinley Park,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 29, 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.

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.

September 29, 2025

MP:yl

o 9/25/25

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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	22WC016289
Case Name	James Emmett v. Village of Tinley Park
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Rachael Sinnen, Arbitrator

Petitioner Attorney	Randall Sladek
Respondent Attorney	Robert Luedke

DATE FILED: 4/29/2025

/s/ Rachael Sinnen, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 22 2025 4.05%

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

James Emmett

Employee/Petitioner

v.

Village of Tinley Park

Employer/Respondent

Case # **22** WC **16289**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Rachael Sinnen**, Arbitrator of the Commission, in the city of **Chicago**, on **February 6, 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, **April 20, 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 (*cervical spine*) *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$66,475.50**; the average weekly wage was **\$1,278.37**.

On the date of accident, Petitioner was **37** years of age, *single* with **one** dependent children.

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

Respondent shall be given a credit of **\$111,157.75** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$111,157.75**.

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

ORDER

The Arbitrator finds that Petitioner's current condition of ill-being to the left shoulder which resulted in permanent restriction per Dr. Corcoran *is* causally related to the injury and that Petitioner's current condition of ill being as it relates to the cervical spine *is not* causally related to the injury.

Having found that Petitioner's current condition of ill-being to the cervical spine is not causally related to the injury, no prospective medical care or charges for past medical services is awarded.

Respondent shall pay Petitioner temporary total disability benefits of **\$852.25** per week for **118 2/7 weeks** (April 21, 2021 to May 21, 2023; May 24, 2023 to June 27, 2023; and September 22, 2023 to October 23, 2023), as provided in Section 8(b) of the Act.

The Arbitrator finds that Petitioner *is not* entitled to vocational rehabilitation as no vocational rehabilitation services have been recommended at this time.

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

APRIL 29 2025

Summary of Medical Treatment

On April 20, 2021, Petitioner presented to Ingalls Occupational Medicine Clinic and reported that he fell at work, tried to prevent the fall with his left arm, and felt a pop in his left shoulder. Physical examination for the neck was normal but pain to palpation, swelling and limited range of motion was noted for the left shoulder. Petitioner was given work restrictions. RX7.

Petitioner started physical therapy with ATI on May 5, 2021. PX1, p. 267.

Records indicate that Petitioner first presented to Dr. Cole on June 17, 2021, at which time Petitioner underwent an injection of the left shoulder, was prescribed PT, and given work restrictions. See RX8.

On August 5, 2021, Petitioner returned to Dr. Cole with persistent left shoulder pain. Surgery was recommended and work restrictions were continued. PX1, p. 167.

On September 9, 2021, Petitioner underwent surgery with Dr. Cole at Midwest Orthopedics at Rush. Surgery included an extensive left shoulder intraarticular debridement, biceps tenodesis, distal clavicle excision and subacromial decompression. Post operative diagnosis included left shoulder AC joint arthritis, impingement syndrome, biceps tendinitis, labral fraying, and intraarticular synovitis. PX1, p. 108; RX 9.

Petitioner started physical therapy with JointPro Physical Therapy on September 28, 2021. PX1, p. 262.

On March 3, 2022, Petitioner returned to Dr. Cole. He reported increases in shooting pain. It was noted that Petitioner was motivated to return to work and did not want permanent restrictions. Dr. Cole ordered an EMG to rule out any nerve issues and an MRI to rule out any structural abnormalities. Work restrictions were continued. PX1, p. 143.

An NCV & EMG was conducted on March 15, 2022 at Midwest Orthopaedics at Rush for left shoulder pain and weakness. Impression read, "there was electrodiagnostic evidence of a left mild sensory median neuropathy at the wrist (carpal tunnel syndrome) with findings consistent with demyelinating process. There is also electrodiagnostic evidence suggestive of a bilateral mild ulnar neuropathy that is not localizable, however, this does not correlate with his current presentation. The finds were symmetric bilaterally on comparison study of the ulnar nerve. There is no electrodiagnostic evidence of a left cervical radiculopathy, left brachial plexopathy, or any other peripheral nerve pathology affecting the left upper extremity." PX1, p. 87.

On March 17, 2022, Petitioner underwent a cortisone injection in the left shoulder with Dr. Cole. PX1, p. 128.

On March 31, 2022, Petitioner returned to Dr. Cole reporting 80% relief from the injection that only lasted two days. Petitioner complained of pain in the anterior shoulder. Dr. Cole reviewed the EMG and noted that it was essentially normal. Dr. Cole also reviewed the MRI from March 21, 2022 which showed normal post operative changes. Petitioner wondered if he had a labral

tear but Dr. Cole noted that there is “nothing structurally wrong with the shoulder that I can correct to improve upon his objective findings or his subjective complaints.” Dr. Cole proposed that Petitioner either take permanent restrictions, a second opinion from a shoulder specialist or see pain management for possible regional pain block consultation. Petitioner’s work restrictions were continued. PX1, p. 122.

On April 29, 2022, Petitioner was seen by Dr. Matthew Saltzman at the request of Respondent pursuant to Section 12 of the Act. Dr. Saltzman opined that Petitioner sustained an aggravation of pre-existing acromioclavicular arthritic aggravated by the work injury and biceps tendonitis which was caused by the work injury. Dr. Saltzman further opined that the surgery Dr. Cole performed was reasonable and necessary. Dr. Saltzman opined that Petitioner’s current complaints are not consistent with primary shoulder pathology. Dr. Saltzman recommended an FCE to determine his work status. RX19.

On May 18, 2022, Petitioner presented to Dr. Michael Corcoran at IBJI for a second opinion. Diagnosis included left shoulder impingement syndrome and an injection was performed. Work restrictions were continued. PX2, p. 37.

On June 15, 2022, Petitioner returned to Dr. Corcoran and reported improvement in the consistency of the pain that radiates down the arm and occasionally into the neck. Dr. Corcoran noted that Petitioner’s symptoms were most consistent with a cervical radiculopathy versus an acute shoulder issue. A cervical MRI was recommended with a referral to Dr. Mosenthal. Petitioner was placed off work. PX2, p. 50.

On July 14, 2022, Petitioner presented to Dr. William Mosenthal at IBJI. Petitioner reported that his pain began after a fall at work in April 2021. Petitioner reported pain in the left anterior and posterior shoulder girdle with occasional radiation into the anterior arm but not past the elbow. Dr. Mosenthal reviewed the EMG from March 2022 and the July 7, 2022 cervical MRI showing disc osteophyte complexes at C5-6 and C6-7 resulting in right greater than left foraminal stenosis at those levels. Diagnosis included cervical spondylosis. Dr. Mosenthal noted that Petitioner did not recommend surgical intervention for the cervical spine. It was noted that Petitioner’s primary pain generator appears localized to his shoulder. He suggested Petitioner return to Dr. Corcoran for possible revision surgery or pain management. Dr. Mosenthal noted that Petitioner had no spinal work restrictions but maintained Dr. Corcoran’s work restrictions. PX2, p. 64.

On July 18, 2022, Petitioner returned to Dr. Corcoran who recommended a left shoulder revision diagnostic arthroscope and kept Petitioner off work. PX2, p. 75.

On October 14, 2022, Petitioner underwent surgery with Dr. Corcoran at Oak Surgery Center. Procedures included revision of left shoulder arthroscopy, chondroplasty of the glenoid, chondroplasty of the humerus, labral debridement anterior and posterior, as well as minimal bursectomy. Postoperative diagnosis included grade 3 chondromalacia on the humerus and the glenoid, labral fraying anterior, superior, and posterior as well as minimal hypertrophic bursal tissue. PX2, p. 1-4.

On October 15, 2022, Petitioner started physical therapy at IBJI and was last seen there on June 20, 2023. PX2, pp. 111, 416.

From December 12, 2022, through March 20, 2023, Petitioner returned to Dr. Corcoran and reported improvement in physical therapy. Dr. Corcoran ordered Petitioner to continue PT and kept him off work/work restrictions. PX2, pp. 179 – 270.

On April 17, 2023, Petitioner returned to Dr. Corcoran who noted that healing could take approximately 2 years to full maturation. It was noted that numbness and tingling is likely not related to the shoulder but likely referred pain. Petitioner was to continue work conditioning and was placed on work restrictions. PX2, p. 304.

On May 15, 2023, Petitioner returned to Dr. Corcoran with complaints of pain, weakness, and radicular symptoms down the left arm. Petitioner was instructed to follow up with Dr. Mosenthal for the neck for the radicular symptoms down the left arm. Petitioner was to continue work conditioning and work restrictions. PX2, p. 330.

On May 26, 2023, Petitioner returned to Dr. Mosenthal. Petitioner continues to have pain in the left posterior neck with radiation into his trapezius, parascapular region, upper arm, and occasionally in his forearm. Surgery was recommended in the form of C5-6, C6-7 anterior cervical discectomy and fusion. Petitioner was referred to pain management for an injection. PX2, p. 341.

On June 12, 2023, Petitioner presented to Dr. Juan Santiago-Palma for pain management at Oak Orthopedics who recommended a cervical epidural steroid injection. PX2, p. 374.

On June 14, 2023, Petitioner returned to Dr. Saltzman at the request of Respondent pursuant to Section 12 of Act. Dr. Saltzman noted that his opinions have not changed with regards to causation and diagnosis. Dr. Saltzman wrote that Petitioner has regained full range of motion and has excellent strength. Dr. Saltzman opined that Petitioner's subjective pain is not substantiated by the objective evidence. Dr. Saltzman opined that Petitioner's treatment and testing to date has been reasonable, necessary, and related. Dr. Saltzman opined that no additional treatment is necessary, Petitioner has reached MMI and can return to work without restrictions. RX32.

On June 26, 2023, Petitioner returned to Dr. Corcoran who recommended an FCE. PX2, p. 395.

On July 11, 2023, Petitioner underwent an ESI with Dr. Santiago-Palma at Oak Surgery Center. PX2, p. 4-8.

On August 1, 2023, Petitioner returned to Dr. Santiago-Palma and reported no improvement from the injection. A new cervical MRI was ordered and work restrictions were given. PX2, p. 430.

On August 22, 2023, Petitioner underwent an FCE at IBJI. It was noted that the FCE was valid and a medium physical demand level was recommended. PX2, p. 457; PX5.

On September 1, 2023, Petitioner returned to Dr. Santiago-Palma who reviewed the new cervical MRI. Dr. Santiago-Palma recommended an ESI at C7-T1 and placed Petitioner on work restrictions. PX2, p. 505.

On September 18, 2023, Petitioner returned to Dr. Corcoran to review the FCE results. Dr. Corcoran placed Petitioner on permanent work restrictions per the FCE and placed Petitioner at MMI. PX2, p. 526.

On October 6, 2023, Petitioner underwent an ESI with Dr. Santiago-Palma at Oak Surgery Center. PX2, p. 541.

On October 6, 2023, Respondent's Section 12 examiner, Dr. Saltzman, performed an additional medical record review. Dr. Saltzman reviewed the FCE and disagreed with its conclusion that Petitioner needed permanent work restrictions based on his physical examination findings in May 2023. Dr. Saltzman opined that any treatment for cervical radiculopathy is unrelated to the work injury. RX33.

On November 16, 2023, Petitioner returned to Dr. Santiago-Palma and reported that his radicular symptoms resolved after the ESI. Petitioner reported axial type symptoms along the cervical spine. Dr. Santiago-Palma recommended median branch blocks. PX2, p. 552.

On January 22, 2024, Petitioner underwent left cervical medial branch blocks at Oak Surgery Center with Dr. Santiago-Palma. PX2, p. 587.

On March 21, 2024, Petitioner returned to Dr. Santiago-Palma and reported 80% improvement following the blocks. Dr. Santiago-Palma recommended radiofrequency ablation along the left median branches. PX2, p. 610.

On April 4, 2024, Petitioner underwent cervical median branch facet neurotomy with Dr. Santiago-Palma at Oak Surgery Center. PX2, p. 640.

On April 18, 2024, Petitioner returned to Dr. Santiago-Palma and reported 50% improvement from the ablation. PX2, p. 647.

On May 16, 2024, Petitioner returned to Dr. Santiago-Palma and reported pain along the cervical spine and radicular symptoms along the left upper extremity. A new cervical MRI was ordered. PX2, p. 672.

On May 31, 2024, Petitioner returned to Dr. Santiago-Palma who reviewed the cervical MRI and referred Petitioner back to Dr. Mosenthal for surgical evaluation. PX2, p. 698.

On June 17, 2024, Petitioner returned to Dr. Mosenthal. Petitioner reported that injections are no longer helping and he continued to have pain localized to the left posterior neck with radiation into his trapezius, parascapular region, upper arm, and occasionally into his forearm. Petitioner reported numbness and tingling in his thumb, index, and long finger. It was noted that Petitioner was neurologically intact. Dr. Mosenthal discussed "the role of surgical intervention, in a

neurologically intact individual, as being reserved for incapacitating pain refractory to nonsurgical treatment.” Dr. Mosenthal recommended an EMG to evaluate for peripheral nerve entrapment and a cervical CT for preoperative planning was ordered as well. PX2, p. 715.

On June 28, 2024, Petitioner presented to Dr. Jesse Butler on behalf of Respondent pursuant to Section 12 of the Act. Dr. Butler opined that Petitioner did not injure his cervical spine on April 20, 2021 and there was no medical causation between the left shoulder injury and his current condition with regards to the cervical spine. Dr. Butler opined that based on the EMG/NCV, physical examination and MRI, his left arm complaints are unrelated to the cervical spine. Dr. Butler opined that Petitioner did not require any work restrictions as a result of the cervical spine and did not have any compressive pathology on the left side of the cervical spine to correlate with his current subjective complaints. Dr. Butler opined that Petitioner’s care and treatment for the cervical spine is not reasonable nor necessary as a result of the work accident. RX53.

On July 2, 2024, Petitioner underwent an NCS/EMG at IBJI. Conclusion showed electrodiagnostic evidence of chronic left C7 radiculopathy. PX2, p. 740.

On July 12, 2024, Petitioner returned to Dr. Mosenthal who reviewed the cervical CT and EMG results as well as an IME. Dr. Mosenthal wrote “we discussed the discordance between his symptoms and imaging findings. I do not recommend spine surgical intervention.” Dr. Mosenthal recommended a spinal cord stimulator trial. PX2, p. 747.

On July 19, 2024, Petitioner returned to Dr. Santiago-Palma and requested a second opinion for surgical consult. Dr. Santiago-Palma also recommended PT. PX2, p. 759.

On July 25, 2024, Petitioner began PT for the neck at IBJI. PX2, p. 781.

On August 7, 2024, Petitioner presented to Dr. Ashraf Darwish at Hinsdale Orthopaedics for a second opinion. Petitioner reported that on April 20, 2021 he had a fall at work and immediately had severe left shoulder and left sided neck pain into the upper arm. Dr. Darwish opined that Petitioner’s neck condition is causally related to the work accident “given the temporal timing of the symptoms following the mechanism of injury.” Dr. Darwish recommended a C5-6, C6-7 anterior cervical discectomy and fusion with use of allograft bone. Dr. Darwish also placed Petitioner off work and recommended additional PT. PX2, p. 791.

Petitioner underwent fusion surgery with Dr. Darwish on September 13, 2024. PX2, p. 879.

On December 12, 2024, Petitioner presented to Dr. Bryan Neal at the request of Respondent pursuant to Section 12 of the Act. Dr. Neal opined that Petitioner “was able to return to his pre-accident employment” after the work injury. RX50.

Petitioner returned to Dr. Darwish status post operative. The last date of treatment since trial was on January 8, 2025. Petitioner reported 70% improvement and it was noted that Petitioner would continue PT to build strength. PX4.

Petitioner testified at trial that he was still undergoing physical therapy twice a week. While he had some stiffness around his neck and occasional arm pain, the major pain had been alleviated after his cervical spine surgery.

Petitioner's Vocational Assessment: Karen Lynn Taussig

In December 2023, an initial vocational assessment was performed by Karen Lynn Taussig, MS, CRC, at Genex Services at the request of Petitioner's counsel. Taking into consideration, Petitioner's education, work history, physical capabilities per the August 2023 FCE (and Dr. Corcoran's September 2023 release with permanent restrictions), as well as a transferable skills analysis she performed (PX8), Ms. Taussig opined that Petitioner was unable to return to his former profession but that he had transferable skills to other occupations. PX7. Ms. Taussig then performed a labor market survey in January 2024. The survey concluded that a reasonable and stable labor market was available to Petitioner in the Chicagoland and Northwest Indiana area that would result in earning ranging from \$17.75 to \$41.00 an hour (average of \$24.00 an hour). PX6.

Respondent's Vocational Assessment: Julie Bose

In September 2024, Julie Bose, M.S., CRC, performed an initial vocational rehabilitation assessment on behalf of Respondent. RX51, Dep Ex 2. On January 8, 2025, Ms. Bose testified via evidence deposition. Ms. Bose, a vocational rehabilitation counselor with over 40 years of experience, provided a detailed summary of her professional qualifications, including her education in biology, psychology, and vocational rehabilitation counseling. Ms. Bose holds certifications in rehabilitation counseling, disability management, and clinical professional counseling.

Ms. Bose testified to her role in evaluating the vocational rehabilitation needs of Petitioner. She reviewed several documents related to Petitioner's biographical information, medical history, and work history. Ms. Bose conducted a Zoom interview with Petitioner on September 10, 2024, where she obtained biographical details, including his educational background in criminal justice, training at two police academies, and his completion of an electrical apprenticeship. Petitioner also reported being computer literate and having experience using computers in previous jobs.

Regarding Petitioner's medical background, Ms. Bose summarized his work-related injury, which occurred on April 20, 2021, involving his left shoulder. He received treatment from various doctors, including two surgeries on his left shoulder. Following these surgeries, Petitioner underwent a Functional Capacity Evaluation (FCE), which determined he was capable of performing medium-duty work. There were differing medical opinions regarding Petitioner's work capabilities, with some doctors indicating he had no work restrictions, while others, including Dr. Corcoran and the FCE, suggested medium-duty work.

Ms. Bose also reviewed Petitioner's work history. At the time of his injury, Petitioner worked as a full-time maintenance worker at the Village of Tinley Park Public Works Department, earning \$31.90 per hour. This role required heavy physical demands and was skilled in nature. After his injury, Petitioner was called back to work within Dr. Saltzman's restrictions but chose not to return, leading to his termination from the position. Prior to his work at Tinley Park, Petitioner had

completed a one-year electrical apprenticeship and worked as a law enforcement officer in both Markham and the Cook County Department of Corrections.

Ms. Bose further reviewed Petitioner's job search efforts. According to Petitioner, he began looking for alternative employment in the winter of 2023, contacting an average of five to ten employers per week via platforms such as Indeed and LinkedIn. However, Petitioner reported that he had not received any job interviews or offers at the time of the interview. Ms. Bose reviewed Petitioner's job logs, noting that he had contacted 162 employers over a 24-week period, with 51 rejections and 22 positions for which he did not qualify. Ms. Bose observed that Petitioner's job search could be more focused, particularly given his transferable skills in light and sedentary work. She recommended a more assertive approach to job searching, including follow-up communication with employers and a better resume.

In her professional opinion, Ms. Bose concluded that Petitioner is employable despite his work injury. She cited his education, his diverse work experience, and his transferable skills, all of which position him for a variety of potential career paths. Specifically, she identified opportunities for Petitioner in positions such as maintenance management, security guard supervisor, or dispatcher. According to Ms. Bose, these roles typically pay between \$50,000 and \$78,000 annually, which is within Petitioner's capabilities based on his skills and experience.

Additionally, Ms. Bose clarified her role in handling differing medical opinions. She explained that while she is not qualified to make medical determinations, her reports reflect the varying medical opinions, providing vocational recommendations based on those differing perspectives. In Petitioner's case, Ms. Bose presented two vocational scenarios based on the different medical opinions. If the opinions of Dr. Butler and Dr. Saltzman were adopted, she opined that Petitioner could return to his prior role as a maintenance worker without sustaining any wage loss. However, if the opinions of Dr. Corcoran and the FCE were adopted, she opined that Petitioner could not return to his previous work but could pursue other roles leveraging his transferable skills, such as in maintenance management or security positions.

Ms. Bose also provided an estimate of Petitioner's potential yearly earnings. She stated that in the lowest-paying position, as a security guard dispatcher, Petitioner could expect an annual salary of approximately \$50,450. In higher-paying roles such as maintenance supervisor, Petitioner could earn up to \$78,360 annually.

During the cross-examination Ms. Bose clarified that she did not conduct a formal labor market survey but instead relied on statistics from the internet and the Department of Labor. When asked about positions in security management, Ms. Bose conceded that it may not be realistic for Petitioner to ascend to a management role without prior experience in the field. When asked about Petitioner's absence from the workforce since his injury in April 2021, Ms. Bose acknowledged that the gap in his employment history could make it more challenging for him to secure new employment. RX51.

Petitioner's Employment Case

On January 14, 2025, Michael Carroll, testified via evidence deposition on behalf of Respondent. Mr. Carroll is a partner at the law firm Peterson, Johnson & Murray, LLC, and a licensed attorney in Illinois for 30 years. On November 20, 2023, he was tasked with prosecuting an employment case before the Tinley Park Civil Service Commission. The complainant was the Village Manager, Patrick Carr, and the respondent was the employee, James Emmett (the Petitioner in this workers' compensation case). Mr. Carroll drafted the charges and specifications against Petitioner, which included allegations such as insubordination, failure to meet work standards, absence without approval, and inability to perform job duties due to physical or mental impairments.

Mr. Carroll confirmed that a hearing was held on November 20, 2023 but an agreement was reached between Mr. Carroll and Petitioner's employment attorney that same day. Under the agreement, Petitioner admitted to one charge of inability to perform job duties due to a physical or mental impairment, and in exchange, the remaining charges were dismissed. This stipulation was presented to the Civil Service Commission, which accepted the agreement, resulting in Petitioner's termination. However, Mr. Carroll clarified that there was no stipulation or finding regarding whether Petitioner's disability was work-related. He also confirmed that the Civil Service Commission did not conduct any fact-finding regarding the nature of Petitioner's disability. The termination order signed by the Commission on November 20, 2023, similarly, did not address whether the disability was work-related. RX52.

CONCLUSIONS OF LAW

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

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

The main issues of this case include (1) whether Petitioner's cervical spine is related to the accident (*and whether Petitioner is entitled to further treatment*) and (2) whether Petitioner has permanent restrictions for his left shoulder (*and whether Petitioner is entitled to vocational rehabilitation*).

Petitioner's Left Shoulder

In determining whether Petitioner has permanent restrictions for his left shoulder, the Arbitrator finds the medical opinions of Dr. Corcoran to be more credible and persuasive than the conclusions reached by Respondent's Section 12 examiners based on the objective findings from two surgical procedures, a valid FCE and consistent symptomatology over an extended period.

Dr. Saltzman's and Dr. Neal's opinions that Petitioner requires no permanent restrictions and may return to full-duty work is undermined by the findings of two separate shoulder surgeries—one by Dr. Cole and the other by Dr. Corcoran—both of which revealed substantial intraoperative pathology, including labral fraying, biceps tendinitis, impingement, chondromalacia, and subacromial inflammation. The opinions of Respondent's Section 12 examiners is not supported

by the FCE performed in August 2023, which was deemed valid and which concluded Petitioner was restricted to medium-duty work. While Dr. Saltzman disagreed with the FCE's conclusions, he did so solely on the basis of his earlier clinical impressions, and neither Dr. Saltzman nor Dr. Neal offer any compelling justification for rejecting the valid FCE results. Dr. Corcoran's opinion is consistent the documented intraoperative abnormalities, ongoing clinical assessment, and all relevant information, including the FCE and post-operative recovery.

The Arbitrator does not find Petitioner's employment case before the Civil Service Commission relevant to his workers' compensation case. Mr. Carroll confirmed that there was no stipulation or finding regarding whether Petitioner's disability was work-related and the Civil Service Commission did not conduct any fact-finding regarding the nature of Petitioner's disability. See RX52.

Based on the record as a whole, the Arbitrator finds that Petitioner's current condition of ill-being to the left shoulder which resulted in permanent restriction per Dr. Corcoran is causally related to the injury.

Petitioner's Cervical Spine

In regards to the cervical spine, the Arbitrator finds it compelling that there are no documented complaints of neck pain for over a year since the accident. None of Petitioner's accident reports refer to an injury to the neck either. When Petitioner returned to Dr. Corcoran on June 15, 2022, almost 14 months following the work accident, Petitioner reported that his shoulder pain radiated down the arm and occasionally into the neck. See RX2, p. 62. Even when Dr. Corcoran referred Petitioner to Dr. Mosenthal in July 2022, Dr. Mosenthal initially opined that Petitioner's primary pain generator was localized to his shoulder and returned Petitioner back to Dr. Corcoran for possible revision surgery or pain management. See PX2, p. 64.

The Arbitrator is not persuaded by the medical opinions of Dr. Darwish who opined that Petitioner's neck condition is causally related to the work accident "given the temporal timing of the symptoms following the mechanism of injury." Dr. Darwish relied on Petitioner's report that he immediately had severe left shoulder and left sided neck pain into the upper arm following a fall at work on April 20, 2021. The primary basis of Dr. Darwish's opinion is not supported by the records submitted into evidence. None of Petitioner's other treating physicians provide a specific causation opinion relating Petitioner's current cervical spine condition to either the accident or to Petitioner's left shoulder injury/treatment. Respondent's Section 12 examiner, Dr. Butler, opined that Petitioner did not injure his cervical spine on April 20, 2021 and there was no medical causation between the left shoulder injury and his current condition with regards to the cervical spine. Dr. Butler based his opinion in part on the initial EMG/NCV, MRIs, and his physical examination.

Based on the record as a whole, the Arbitrator finds that Petitioner's' current condition of ill-being as it relates to the cervical spine is *not* causally related to the injury.

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

Petitioner claims outstanding medical bills as reflected in Petitioner's Exhibits 2 and 3. See AX1. The Arbitrator notes that said bills are related to Petitioner's cervical spine. See PX2, 3. Having found that Petitioner's current condition of ill-being to the cervical spine is not causally related to the injury, no additional medical benefits are awarded.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Having found that Petitioner's current condition of ill-being to the cervical spine is not causally related to the injury, no prospective medical care will be awarded.

Issue L, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

Petitioner claims to be entitled to TTD benefits from April 21, 2021 to May 21, 2023; May 24, 2023 to June 27, 2023; and September 22, 2023 to February 6, 2025. See AX1.

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether they are capable of a return to the workforce. Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, they are no longer eligible for TTD benefits. Archer Daniels Midland Co. v. Indus. Comm'n, 138 Ill.2d 107, 118 (1990).

On September 18, 2023, Petitioner returned to Dr. Corcoran who placed Petitioner at MMI with permanent restrictions per the FCE. See PX2, p. 526. While Petitioner continued treatment for the cervical spine after September 18, 2023, the Arbitrator has already found that Petitioner's current condition of ill-being to the cervical spine is not causally related to the injury. Although Petitioner was given permanent restrictions for the left shoulder, his left shoulder condition stabilized on September 18, 2023 when he was placed at MMI and he was no longer eligible for TTD benefits after that date. See Archer Daniels Midland Co., at 118. Whether Petitioner is eligible for maintenance benefits after September 18, 2023 is a separate question but one which the Arbitrator was not asked to address. See AX1.

Respondent disputes liability to TTD after October 23, 2023 presumably when it received the second Section 12 report from Dr. Saltzman. See AX1.

Based on the above, the Arbitrator finds Respondent liable for **118 2/7 weeks** of TTD benefits (April 21, 2021 to May 21, 2023; May 24, 2023 to June 27, 2023; and September 22, 2023 to October 23, 2023) at a weekly rate of **\$852.25**. The parties stipulate that Respondent has paid TTD benefits in the amount of \$111,157.75. See AX1.

Issue O, whether Petitioner is entitled to vocational rehabilitation, the Arbitrator finds as follows:

Section 8(a) of the Act reads, in part,

“The employer shall also pay for treatment, instruction, and training *necessary* for the physical, mental, and vocational rehabilitation of the employee, including all maintenance costs and expenses incidental thereto. If as a result of the injury the employee is unable to be self-sufficient the employer shall further pay for such maintenance or institutional care as shall be required.”

820 ILCS 305/8a (*emphasis added*).

A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity. *Euclid Bev. v. Illinois Workers' Compensation Comm'n*, 2019 IL App (2d) 180090WC, ¶ 29, 124 N.E.3d 1027 citing *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1019, 832 N.E.2d 331, 295 Ill. Dec. 180 (2005). Because the primary goal of rehabilitation is to return the injured employee to work (*Schoon v. Industrial Comm'n*, 259 Ill. App. 3d 587, 594, 630 N.E.2d 1341, 197 Ill. Dec. 217 (1994)), if the injured employee has sufficient skills to obtain employment without further training or education, that factor weighs against an award of vocational rehabilitation. *National Tea Co. v. Industrial Comm'n*, 97 Ill. 2d 424, 432, 454 N.E.2d 672, 73 Ill. Dec. 575 (1983).

Petitioner’s initial vocational assessment by Ms. Taussig concluded that Petitioner had transferable skills to other occupations and that a reasonable and stable labor market was available to Petitioner with an average earning of \$24.00 per hour. Ms. Taussig did not recommend any vocational rehabilitation such as an assisted job search. See PX6-8. Respondent’s initial vocational assessment by Ms. Bose also found that Petitioner had transferable skills and believed that occupations were available to Petitioner in a similar earning capacity that Ms. Taussig recommended. Ms. Bose reviewed Petitioner’s job logs and, while Ms. Bose noted that Petitioner’s job search could be more focused, she did not formally recommend any vocational rehabilitation services.

While Petitioner’s work-related injury may have caused a reduction in his earning power, there is no evidence at this point that rehabilitation will increase his earning capacity. See *Euclid Bev.*, 124 N.E.3d 1027. Since no vocational rehabilitation services have been recommended by either vocational counselor, the Arbitrator finds that Petitioner ***is not*** entitled to vocational rehabilitation *at this time*.

It is so ordered:



Arbitrator Rachael Sinnen

APRIL 29 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC001450
Case Name	Shaun Shaw v. City of Springfield
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0406
Number of Pages of Decision	19
Decision Issued By	Maria Portela, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	L. Robert Mueller

DATE FILED: 9/30/2025

/s/Maria Portela, Commissioner

Signature

DISSENT

/s/Marc Parker, Commissioner

Signature

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SHAUN SHAW,

Petitioner,

vs.

NO: 22WC001450

CITY OF SPRINGFIELD,

Respondent.

DECISION AND OPINION ON REVIEW

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

In his brief, the Respondent raises the issue of rebuttable presumption under Section 6(f) of the Act, which is absent from the Arbitrator's analysis.

Section 6(f), provides in relevant part: Any condition or impairment of health of an employee employed as a firefighter, ...which results directly or indirectly from any... lung or respiratory disease or condition... resulting in any disability to the employee shall be rebuttably presumed to arise out of and in the course of the employee's firefighting...employment and, further, shall be rebuttably presumed to be causally connected to the hazards or exposures of the employment.

In *Simpson v. Ill. Workers' Comp. Comm'n*, 2017 IL App (3d) 160024WC, the court explained that this is an ordinary rebuttable presumption and once the employer introduces some evidence of another potential cause of the condition, the presumption ceases to exist and the Commission is free to determine the factual question of whether the occupational exposure was a cause of the claimant's condition based on the evidence before it but without the presumption to

the claimant. (citing *Johnston v. IWCC*, 2017 IL App (2d) 160010WC).

Respondent introduced evidence suggesting alternative potential sources of exposure, including illness within Petitioner's household. We find this evidence sufficient to rebut the presumption. However, considering the record as a whole—including Petitioner's testimony, the timing of positive tests and his initial onset of symptoms, the Commission finds that Petitioner has met his burden of proving by a preponderance of the evidence that he was exposed to Covid-19 by his co-worker, Firefighter Phil Peddycoart, on November 10, 2021. Regarding causation, the Commission affirms that Petitioner's diagnoses of "long Covid" and shortness of breath are causally related to his work injury, as opined by Dr. Fletcher and Dr. Sreedhar.

However, we find that Petitioner failed to prove that his other conditions are causally related. We agree that Petitioner failed to prove that his obstructive sleep apnea was caused or aggravated by his Covid-19 exposure or that his job as a firefighter was an aggravating factor. We find that just because Petitioner waited until after he developed Covid-19 to obtain a sleep study, which had been recommended seven years prior, does not mean that Covid-19 was a contributing factor.

Regarding the "spot" found on Petitioner's thymus, the Commission agrees with Respondent's arguments but notes that the Arbitrator did not specifically find this "spot" causally related to his work accident. *T.34-36*. Since there is no affirmative causation opinion regarding the thymus condition and Petitioner is still treating for it, we find that Petitioner has failed to prove that this condition is causally related to his work injury. However, to the extent the records in evidence relating to the thymus issue also reflect simultaneous treatment and studies for other causally related conditions, those bills are awarded.

To be clear, although Petitioner has numerous other conditions documented in the records, we find that the only conditions he has proven to be currently causally related to his November 10, 2021 Covid-19 exposure and subsequent disease are "long Covid" and shortness of breath.

Based on our findings regarding accident and causation, we affirm the Arbitrator's award of eight weeks of temporary total disability (TTD) benefits. However, we clarify that the eight weeks represent the period from November 17, 2021 through January 11, 2022 (not January 12, 2022). We note that Dr. Comerford's January 13, 2022 record states, "He was able to work yesterday and although he was short of breath with activity he feels much better." *Px5, T.1285*. This is consistent with Petitioner's testimony that he was able to go back to work on January 12, 2022. *T.27*.

Regarding medical expenses, we modify the Decision and hereby deny the medical bills related to Petitioner's sleep study on March 16, 2023 and the December 7, 2023 charges for a CT scan of the paranasal sinus because those are for conditions that pre-dated Petitioner's Covid-19 exposure and there is no medical evidence that they were aggravated by it.

On the issue of permanent partial disability (PPD), we address the five factors included in §8.1b(b) as follows:

- (i) A.M.A. Impairment Rating: We agree with the Arbitrator that no impairment rating

was performed on the Petitioner in this case and this factor will not be given any weight.

- (ii) Occupation: The Arbitrator did not include an analysis of this factor. The Commission finds that Petitioner's occupation is a firefighter and we give this some weight in favor of Petitioner.
- (iii) Age: We agree that the Petitioner was 38 years old at the time of the injury and give this factor moderate weight in Petitioner's favor.
- (iv) Earning Capacity: The Commission agrees that Petitioner did not prove a loss of earning capacity as a result of the work injury and we give no weight to this factor.
- (v) Evidence of Disability Corroborated by the Treating Medical Records: The Commission modifies the Arbitrator's analysis of this factor and finds that only Petitioner's diagnoses of "long Covid" and shortness of breath are causally related to his work accident. Petitioner failed to prove that his other conditions including obstructive sleep apnea, thymus condition and nasal conditions are causally related. We also note that Petitioner's May 25, 2023 pulmonary function test was normal and the June 7, 2023 CT scan of his chest was interpreted as having "No correlate for chronic shortness of breath." The Commission gives this factor significant weight.

Based on our analysis of these five factors, we modify the Arbitrator's Decision and find Petitioner is entitled to a PPD award of 25 weeks under §8(d)2 of the Act because his accidental injuries caused the loss of use of 5% of the person as a whole. This award shall be paid at the weekly rate of \$937.11, which is the maximum PPD rate in effect at the time of Petitioner's accident.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,088.07 per week for a period of 8 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$937.11 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 Respondent pay to Petitioner the medical expenses contained in Petitioner's Exhibit 11, with the exceptions noted above, under §8(a) of the Act subject to the fee schedule in §8.2 of the Act.

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

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

Pursuant to §19(f)(2) of the Act, Respondent is not required to file an appeal bond in this case. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

SEPTEMBER 30 2025

/s/ Maria E. Portela

SE/

/s/ Christopher A. Harris

O: 9/11/25

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DISSENTING OPINION

I respectfully dissent from that portion of the Majority's Decision reducing the permanency award. I would have affirmed the Arbitrator's award of 8% percent loss of use of the person as a whole. Therefore, I respectfully dissent.

/s/ Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	22WC001450
Case Name	Shaun Shaw v. City of Springfield
Consolidated Cases	23WC011608;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	L. Robert Mueller

DATE FILED: 8/7/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 6, 2024 4.70%

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

Shaun Shaw
 Employee/Petitioner

Case # **22** WC **01450**

v.

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

DISPUTED ISSUES

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

FINDINGS

On **11/10/21**, 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 **\$84,869.63**; the average weekly wage was **\$1,632.11**.

On the date of accident, Petitioner was **38** years of age, *married* with **4** dependent children.

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

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

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

ORDER

- The Petitioner did sustain an accident that arose of, and in the course of his employment on November 10, 2021.
- The Petitioner's condition of ill-being was causally related to the work injury of November 10, 2021.
- The Respondent shall pay all reasonable, necessary and causally related medical and hospital bills from the date of the injury through the time of trial.
- The Respondent shall pay the Petitioner temporary total disability benefits from 11/17/21 – 1/12/22, 8 weeks.
- The Respondent shall pay the Petitioner permanent partial disability benefits of \$937.11/week for 40 weeks, because the injuries sustained are 8% loss of use of the Man As A Whole.

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

August 7, 2024

FINDINGS OF FACT

Testimony of Petitioner

The Petitioner testified that he began his employment with the Respondent 13.5 years ago as a firefighter (AT 9). The Petitioner testified that prior to November 10, 2021, he had not contracted COVID 19. Petitioner testified that prior to the injury date, testing protocol at the fire station included submitting to a saliva test at University of Illinois at Springfield. The tests results were then sent to the City of Champaign and emailed to the firefighters (AT 10).

On November 10, 2021, Petitioner was assigned to Station 2. The Petitioner testified that Phil Peddycoart was a fellow firefighter assigned to the same station. The Petitioner testified that on November 10, 2021, he was assigned to work the same apparatus that Peddycoart was assigned to (AT 12). Petitioner testified that he and Peddycoart were discussing shift change. Petitioner further testified that he and Peddycoart were not wearing masks and were standing within 6 feet of each other (AT 13).

The Petitioner testified that prior to November 10, 2021, he did not have any cold or flu-like symptoms (AT 13). The Petitioner further testified that neither him, his wife or children experienced any cold or flu-like symptoms prior to November 10, 2021 (AT 13).

The Petitioner testified that on November 10, 2021, he was made aware that Peddycoart tested positive for COVID (AT 14). Petitioner testified that he did not know of any other firefighter other than Peddycoart that had been diagnosed with COVID at that time (AT 16). The Petitioner testified that he continued his shift that day, and kept complying with the department standards of testing (AT 16).

The Petitioner testified that he received a positive COVID test on November 16, 2021 (AT 17). The Petitioner testified that prior to that date all of his test results were negative (AT 18). The Petitioner testified that in between November 10, 2021 and November 16, 2021, none of his family members developed COVID symptoms (AT 19).

The Petitioner testified that he began to develop symptoms on November 17, 2021 (AT 18). Petitioner testified that he experienced chills, fever, body weakness/fatigue, and cough the evening of November 17, 2021 (AT 19). The Petitioner testified that he initially did not seek medical treatment but sometime later, he developed shortness of breath and fevers between 101 and 103 (AT 20).

The Petitioner reported to Memorial Hospital to see if they could manage his symptoms. Petitioner testified that the emergency department ran some testing and discharged the Petitioner home (AT 20). After several days with no improvement, the Petitioner testified that his wife took him back to Memorial Hospital due to his shortness of breath (AT 21). The Petitioner testified that he was discharged and told to manage his symptoms at home (AT 21).

The Petitioner testified that he continued to have high fevers that he couldn't break with over the counter medications nor steam showers, continued extreme shortness of breath, coughing and confusion (AT 21).

The Petitioner testified that after he returned home from his 7 day stay at the hospital, he remained off work (AT 23).

The Petitioner testified that at the time of admission to the hospital on New Years Eve, he was still experiencing shortness of breath, weakness, and brain fog (AT 26).

The Petitioner testified that prior to November 10, 2021, he had never received any positive findings for CT scans (AT 27).

The Petitioner testified that he was off work from November 17, 2021 to January 12, 2022 (AT 28). The Petitioner was released to return to work on January 12, 2022. Petitioner testified that as of January 12, 2022, he was still experiencing shortness of breath (AT 29). The Petitioner testified that he has been back to work full duty as a firefighter since January 12, 2022 (AT 29).

The Petitioner testified that as a result of his COVID diagnosis, he was diagnosed with sleep apnea and received treatment for that (AT 30). The Petitioner further testified that he was referred to an ENT specialist because he developed audible breathing/wheezing (AT 30). During one of the CT scans, a spot was found between Petitioner's heart and lungs (AT 30).

The Petitioner testified that on May 1, 2023, he responded to a multi-car accident on the highway. Petitioner further testified that when he pulled up to the scene, there was a dust and wind storm and conditions were so bad that it was hard to see within 15 feet in front (AT 31). The Petitioner testified that there were multiple active fires. The Petitioner testified that during that time, he was exposed to dust and contaminants that were leaking towards a drain (AT 32).

The Petitioner testified that he immediately noticed irritation to his eyes, and shortness of breath and sought medical treatment that day (AT 33).

The Petitioner testified that the mass between his heart and lungs did get a little bigger from the initial scan (AT 35). He testified that he has to undergo CT scan follow ups to monitor it (AT 36).

The Petitioner testified that at the time of trial he is still undergoing medical treatment to his heart and lungs (AT 36). The Petitioner further testified that he attends normal eye exams (AT 36).

At the time of trial, the Petitioner testified that he still experiences shortness of breath. Petitioner takes a nasal spray and a couple inhalers to help alleviate his symptoms (AT 38). The Petitioner further testified that he has a continuous cough and wheezing (AT 38). Petitioner also experiences pressure from the mass pushing on his esophagus area (AT 38).

The Petitioner testified that prior to November 10, 2021, he did not have any of the symptoms he had developed from his COVID diagnosis (AT 38).

TESTIMONY OF PHIL PEDDYCOART

Phil Peddycoart testified in this matter on March 15, 2023. Peddycoart testified that he is employed with the Springfield Fire Department as a fire engineer (Pet Exh. 9, pg. 7). Peddycoart further testified that his job duties include driving the fire rig, ensuring equipment is ready, and perform pumping operations at the fire scenes (Pet Exh. 9, pg. 7).

Peddycoart testified that in November 2021 he was working at fire station, Station 2. Peddycoart testified that in the fire station, there are five other firefighters and they work 24 hours on, 45 hours off (Pet Exh. 9, pg. 9). Peddycoart testified that during that 24-hour shift, there are times that he sleeps in the bunks and eats in the kitchen (Pet Exh. 9, pg. 9).

Peddycoart testified that he knows the Petitioner and is aware of the COVID claim the Petitioner has filed. Peddycoart testified that on November 9, 2021, he took a COVID test which was a positive result (Pet Exh. 9, pg. 11). He testified that he became aware of his positive COVID results on November 10, 2021 via email (Pet Exh. 9, pg. 12).

Peddycoart testified that during the shift change on November 10, 2021, he did encounter the Petitioner. Peddycoart further testified that he and the Petitioner had a daily exchange about the overall report of the shift, including the rig operations, call volume, equipment details (Pet Exh. 9, pg. 14). Peddycoart testified that he and Petitioner were standing closer than 6 feet and were not wearing masks on November 10, 2021 (Pet Exh. 9, pg. 15).

Peddycoart further testified that he and Petitioner shared a bunk bed and drove the same fire truck (Pet Exh. 9, pg. 21). Peddycoart testified that believes that the Petitioner received COVID from him because he was the only firefighter during that timeframe that had tested positive and he and Peitoitner had close proximity interactions (Pet Exh. 9, pg. 22).

MEDICAL TREATMENT

11/19/21 - Michael Comerford, MD

The Petitioner had an echocardiogram at Memorial Medical Center, which was read as suspicion for possible RV thrombus. Subsequently, the Petitioner underwent cardiac MRI at Memorial Medical Center, which was negative for any thrombus/mass. The Petitioner was noted to have normal LV systolic function. Borderline RB systolic dysfunction was noted. RVEF of 47%. The Petitioner had episodes of atypical chest pain while in the hospital. He underwent stress test today, which revealed normal exercise capacity. No evidence of ischemia. The Petitioner was reassured Overall, he reports doing well. He denies any chest pain or shortness of breath currently. No leg edema, orthopnea, or PND. No other cardiac complaints.

Treadmill stress test 1/7/22: Negative for ischemia. Good exercise capacity, 13.4 METs.

Hypertensive blood pressure response to exercise. Maximum heart rate of 182 bpm with exercise (Pet. Exh. 5).

11/23/21 -Michael Comerford, MD.

Petitioner has been given these follow-up instructions. Includes Petitioner education materials and information regarding your injury/illness. COVID is a virus - nothing treats a virus but time - while your body fights it, we do treat the symptoms. Over-the-counter remedies will not shorten the length of the illness but may be helpful for cough, sore throat, and nasal and sinus congestion. Don't use decongestants if you have high blood pressure. Take Zofran as needed for nausea. Push fluids, important to stay well hydrated (Pet. Exh. 5).

11/21/21 - Kimberly Martin NP-C.

Petitioner presents to emergency room with complaints of symptoms of COVID-19. He is COVID-19 positive as of a week ago, his whole family has it. He is unvaccinated. He is a firefighter. Most bothersome symptoms are low back pain, cough, overall malaise. Denies recent fevers. No sore throat, chest pain, shortness of breath, abdominal pain, or vomiting. He has intermittent nausea and loose stools. He states his most bothersome symptoms are the cough and the low back pain. No seasonal allergies (Pet. Exh. 4).

11/26/21 - Kimberly Martin NP-C.

Seen for worsening fever and shortness of breath. Diagnosed with fluid last Tuesday. He states he is on his third round of steroids. He was seen in emergency department 2 days ago for similar symptoms. The symptoms have since gotten worse. He is most concerned about blood clot. Reports home oxygen saturation on pulse ox the mid-eighties worse with exertion no chest pain other symptoms reported (Pet. Exh. 4).

11/26/21 - Brandon Koser, DO

Petitioner seen for hospital discharge. Discharge information/education given to Petitioner. Given instructions to follow up with Dr. Michael Comerford and call office for appointment. Return for worsening signs or symptoms. Given the dos, and don'ts on having COVID-19 (Pet. Exh. 4).

11/27/21 - Monica Wilson, RN. St. John's

Petitioner arrives ambulatory to triage with complaints of chest pain, SOB, high fevers, and decreased oral intake since being diagnosed with COVID on 11/16/21. States that he was also told he had COVID- related pneumonia and was given steroids but not antibiotic. He states that this AM his temperature was 103. RN assessed Petitioner V and SP02 was 85%. Petitioner was made Call A and placed on 2 L NC by Dr. Blaustein when in the room. Petitioner is dyspneic at rest - worst with exertion (Pet. Exh. 2).

11/27/21 -Nate Blaustein, MD

Petitioner presents with confirmed Coronavirus. Petitioner presents to the emergency department with complaints of shortness of breath exercise intolerance. Petitioner states he was diagnosed with Covid 10 days ago. He was diagnosed with viral pneumonia and had a CTA of the chest which was negative for pulmonary embolism. Does coughing with productive reddish sputum. Subjective fever chills (Pet. Exh. 2).

11/27/21 - Michael Comerford, MD

Petitioner is a firefighter with no significant past medical history, diagnosed with COVID-19 infection 11 day ago on 11/16/21 along with the rest of his family members including his wife and four children, who presented to the St. John's Hospital emergency room with complaint of fever 103 today, shortness of breath, hypoxia with O2 sats in the 80's at home. He was seen by his PCP via telemedicine 2 days later

Followed by a visit to urgent care as well as to the Memorial Medical Center emergency room. He has bad CT of the chest, abdomen and pelvis done during his stay. Continues to have fever with shortness of breath and hypoxia. He presented to St. John's Hospital today. Being admitted for further management of his COVID-19 infection.

At this point he is being seen by Akindele Adaramola, MD. Has been started on baricitinib 4 mg daily x 14 days, IV/oral dexamethasone 6 mg daily x 10 days, IV Rocephin plus Zithromax for possible coexisting bacterial infection x 5 days, supplemental oxygen, prone positioning, subcutaneous Lovenox for DVT prophylaxis, He appears dehydrated. Encourage oral intake. Avoid IV fluids at this time (Pet. Exh. 5).

11/28/21 -Akindele Adaramola, MD.

Overnight Petitioner developed worsened acute hypoxic respiratory failure with increased oxygen requirement. Currently on nonrebreather mask. He usually mouth breathes. No fever or chills today. No shortness of breath at rest however developed significant shortness of breath with mild activity (Pet. Exh. 2).

12/2/21- Didar Singh, MD

Discharge activities are as tolerated. General diet is appropriate, no wound care needed. Follow up within 1 week with PCP. Chief complaint: SOB with hypoxia from COVID 19 infection. Been treated with prednisone 40 mg daily, cough medications.

Continues to have fever with shortness of breath and hypoxia continues to present to Saint Joe's Hospital today. He is unvaccinated against COVID-19 (Pet. Exh. 2).

12/10/21- Petitioner given first dose of COVID-19 vaccine.

12/22/21 - Michael Comerford, MD.

The importance of medication compliance was discussed. He was advised of possible side effect, risks, and benefits of any current and/or new medications, as well as barriers assessed and addressed. Additional evaluation of cardiorespiratory function with echocardiogram followed by stress test evaluation. Encourage graded return to activity with a program outlined for increase in exertion every 5 days for the next 2 weeks. Here with his wife today prior to returning to work to assess his clinical status after suffering from a severe infection. He states he continues to have shortness of breath with exertion and residual cough lingers (Pet. Exh. 5).

12/30/2021—Echocardiogram

MMC: RV apical echo density is concerning for RV thrombus, clinical correlation recommended, dedicated RV imaging with cardiac MRI for additional evaluation recommended, LVEF 57 %, mildly enlarge right ventricle, normal RY systolic function (Pet. Exh. 4).

12/31/21 - Syed Ali Abbas, MD.

Reviewed CTA chest done today which was negative for any pulmonary embolism some residual ground- glass opacity in the lungs which is improved from prior CTA. There is a 0.4-centimeter lung nodule.

Echocardiogram done on 12/30/21 showed RV thrombus. Admit as observation. Springfield clinic cardiology Dr. Jha consulted, will evaluate the Petitioner for possible need of cardiac MRI. Ordered bilateral lower for any DVT. Heparin drip without bolus. DVT prophylaxis on heparin drip. Petitioner denies complaint. States he was advised to come to ER after having an echo on 12/30.

Reports he had the echo because he still felt fatigued and dyspnea post covid. He denies symptoms now. Ever since discharge, Petitioner has been complaining about generalized fatigue and exertional dyspnea which has been improving with every passing day. He was required to undergo medical examination prior to restarting his job as a firefighter hence his PCP recommended echocardiogram which was done on 12/30/21. Earlier today he received a call to come to the ED. As his echocardiogram showed RV thrombus (Pet. Exh. 2).

12/31/21- Saurabh Jha, MD

Discussed the Petitioner's H & P as well as all pertinent labs, radiology studies, and discussions with other consultants. Recommends calling radiologist to see if CTA can further evaluate as the echo is equivocal. Aaron Konrad, MD spoke at length with him, he reviewed the image again and not that he cannot definitively comment on the presence or absence of an apical thrombus (Pet. Exh. 2).

12/31/21 - Syed Ali Abbas, MD

Discussed the Petitioner's H & P as well as all pertinent labs, radiology studies, and discussions with other consultants. Recommends plan as above, recommends starting heparin and admitting the Petitioner has an obvious hope for cardiac MRI tomorrow to definitively rule out/confirmed RV thrombus (Pet. Exh. 2).

12/31/21 - Saurabh Jha MD

Discussed the Petitioner's H & P as well as all pertinent labs, radiology studies, and discussions with other consultants. Recommends calling radiologist to see if CTA can further evaluate as the echo is equivocal. Aaron Komad, MD spoke at length with him, he reviewed the image again and not that he cannot definitively comment on the presence or absence of an apical thrombus (Pet. Exh. 2).

1/1/22 - Syed Ali Abbas, MD.

Plan Dyspnea, post COVID-19 condition, intracardiac thrombosis, Mild AKI. Reviewed CTA chest done today which was negative for any pulmonary embolism, some residual ground-glass opacity in the lung which is improved from prior CTA. There is a 0.4-centimeter lung nodule. Echocardiogram done on 12/30/21 showed RV thrombus. Petitioner seen at bedside. Denies any acute overnight event remains hemodynamically stable (Pet. Exh. 2).

1/1/22 - Saurabh Jha, MD

The Petitioner is a 39-year-old male with no significant medical history who was instructed to come to the ER for evaluation after outpatient echocardiogram showed possible RV apical thrombus. Petitioner reports that he had COVID infection in November. He had fever and cough for 10 days. He was admitted to St. John's Hospital. Petitioner reports some exertional shortness of breath and fatigue, which is improving. Petitioner reports that he had brief episode of chest pain lasted for couple of minutes, occurred more than 10 days ago. EKG in the ER revealed sinus rhythm (Pet. Exh. 2).

1/2/22 - Saurabh Jha, MD

Reviewed CT A chest done today which was negative for any pulmonary embolism, some residual ground-glass opacity in the lungs which is improved from prior CTA. There is a 0.4 centimeters lung nodule. Echocardiogram done on 12/30/21 showed RV thrombus. Spoke to MRI, they do not have any tech available to do the cardiac MRI over the weekend. Lower extremity duplex negative for DVT. On heparin drip for possible RV thrombus. Follow up for possible RB thrombus. Petitioner seen at bedside (Pet. Exh. 2).

1/2/22 - Jacob Scheer, MD

Petitioner has abnormal echocardiogram: Possibility of tight ventricular apical thrombus versus prominent trabeculations. CTA negative for PE. Plan for cardiac MRI-hopefully today. Petitioner is currently on heparin infusion empirically. Requested a radiology technician to perform MRI as soon as possible (Pet. Exh. 2).

1/3/22 - Jacob Scheer, MD

Reviewed CTA chest done today which was negative for any pulmonary embolism, some residual ground-glass opacity in the lung which is improved from prior CTA. There is 0.4-centimeter lung nodule. Echocardiogram done on 12/30/21 showed RV Thrombus (Pet. Exh. 2).

1/3/22 - Saurabh Iha, MD

Petitioner was diagnosed with COVID pneumonia end of November through early December was treated there return home and since that time has been complaining of generalized fatigue and dyspnea. Echocardiogram was conducted which was concerning for apical thrombus. Admitted to Springfield Clinic hospitalist group. Cardiology was consulted. Started on heparin drip. Cardiac MRI was ordered to further assess this apical thrombus versus trabeculation. He underwent cardiac MRI on 3rd January 2022. Results reviewed GI was following with the Petitioner was hospitalized. Found he had no thrombus (Pet. Exh. 2).

Cardiac MRI 1/4/2022: Normal LV systolic function and wall motion, LVEF 62%. No evidence of delayed myocardial enhancement. Normal right ventricular size with mildly reduced systolic function. RVEF 47%. Prominent trabeculations at the RV apex. No evidence of mass/thrombus in the right ventricle. No significant valvular abnormalities (Pet. Exh. 2).

CT Chest: Ground glass opacities seen diffusely throughout the lungs. Patchy consolidation within the lung seen previously has been resolved. 0.3 cm pulmonary nodules in the lingula. 0.4 cm pulmonary nodule in the light lower lobe (Pet. Exh. 2).

1/7/22 - Saurabh Jha, MD

Seen today for follow up. He had an echocardiogram at Memorial Medical Center, which was read as suspicious for possible RV thrombus. Subsequently, he underwent cardiac MRI at Memorial Medical Center, which was negative for any thrombus/mass. Note to have normal LV systolic function. Borderline RV systolic dysfunction was noted. RVEF of 47%. He had an episode of atypical chest pain while in the hospital. Underwent stress test today. Revealed normal exercise capacity. No evidence of ischemia. Petitioner was reassured overall; he reports coding well. No other cardiac complaints currently (Pet. Exh. 4).

5/1/23 -St. John's Hospital

On after the dust storm. Petitioner's lungs and eyes were examined. He was prescribed medication and discharged home (Pet. Exh. 2).

5/1/23- Dr. Sreedhar

Petitioner is seen for his lungs on. Dr. Sreedhar ordered a CT scan of Petitioner's chest to monitor the Petitioner's mass between his heart and lungs (Pet. Exh. 3).

June 2, 2023- Dr. Fletcher

The Petitioner presented to an independent medical exam with Dr. Fletcher reviewed voluminous medical records, including the deposition of Phil Peddycoart and performed a physical examination of the Petitioner. The Petitioner provided a history of the timeline of events that lead to his diagnoses. He first manifested symptoms around 11/10/21 after being exposed to fellow firefighter, Peddycoart.

The Petitioner's symptoms on this day was wheezing, shortness of breath, possible permanent damage to heart and lungs, possible asthma, and Tremors. Dr. Fletcher opined that the Petitioner contracted COVID-19 from

a workplace exposure on November 10, 2021. The Petitioner became acutely ill with respiratory and cardiac symptoms. The Petitioner ended up being hospitalized for acute COVID-19 pneumonia and suspected pulmonary embolism and cardiac issues. The Petitioner did improve and was able to return to work. The Petitioner has been plagued with chronic fatigue, shortness of breath, and occasional wheezing. (Pet. Exh. 6).

Dr. Fletcher diagnosed the Petitioner with acute COVID-19 infection with features of long COVID, involving the cardiovascular and respiratory systems, obstructive sleep apnea. Dr. Fletcher further opined that Petitioner's diagnosis of COVID was directly related to his occupational exposure (Pet. Exh. 6).

10/31/23-Dr. Sreedhar

The Petitioner was seen and treated for, chronic cough and interstitial pulmonary disease. (Pet. Exh. 3).

1/24/24-Dr. Sreedhar

The Petitioner was seen, and treated for, Post Covid-19 condition and persistent hyperplasia of thymus. (Pet. Exh. 3).

CONCLUSIONS OF LAW

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

On November 10, 2021, Petitioner was assigned to Station 2. The Petitioner testified that Phil Peddycoart was a fellow firefighter assigned to the same station. The Petitioner testified that on November 10, 2021, he was assigned to work the same apparatus that Peddycoart was assigned to (AT 12). Petitioner testified that he and Peddycoart were discussing shift change. Petitioner further testified that he and Peddycoart were not wearing masks and were standing within 6 feet of each other (AT 13).

The Petitioner testified that prior to November 10, 2021, he did not have any cold or flu-like symptoms (AT 13). The Petitioner further testified that neither him, his wife or children experienced any cold or flu-like symptoms prior to November 10, 2021 (AT 13).

The Petitioner testified that on November 10, 2021, he was made aware that Peddycoart tested positive for COVID (AT 14). Petitioner testified that he did not know of any other firefighter other than Peddycoart that had been diagnosed with COVID at that time (AT 16).

Firefighter Peddycoart testified that during the shift change on November 10, 2021, he did encounter the Petitioner. Peddycoart further testified that he and the Petitioner had a daily exchange about the overall report of the shift, including the rig operations, call volume, equipment details (Pet Exh. 9, pg. 14). Peddycoart testified that he and Petitioner were standing closer than 6 feet and were not wearing masks on November 10, 2021 (Pet Exh. 9, pg. 15).

Peddycoart further testified that he and Petitioner shared a bunk bed and drove the same fire truck (Pet Exh. 9, pg. 21). Peddycoart testified that believes that the Petitioner received COVID from him because he was

the only firefighter during that timeframe that had tested positive, and he and Peitoitner had close proximity interactions (Pet Exh. 9, pg. 22).

The Petitioner testified that he began to develop symptoms on November 17, 2021 (AT 18). Petitioner testified that he experienced chills, fever, body weakness/fatigue, and cough the evening of November 17, 2021 (AT 19). The Petitioner testified that he initially did not seek medical treatment but sometime later, he developed shortness of breath and fevers between 101 and 103 (AT 20).

The Respondent offered no evidence to refute the Petitioner's contention that he contracted Covid-19 at work from Firefighter Peddycoart.

Wherefore, the Arbitrator finds that the Petitioner did sustain a work-related accident on November 10, 2021

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

The Petitioner testified that he began to develop symptoms on November 17, 2021 (AT 18). Petitioner testified that he experienced chills, fever, body weakness/fatigue, and cough the evening of November 17, 2021 (AT 19). The Petitioner testified that he initially did not seek medical treatment but sometime later, he developed shortness of breath and fevers between 101 and 103 (AT 20).

The Petitioner reported to Memorial Hospital to see if they could manage his symptoms. Petitioner testified that the emergency department ran some testing and discharged the Petitioner home (AT 20). After several days with no improvement, the Petitioner testified that his wife took him back to Memorial Hospital due to his shortness of breath (AT 21). The Petitioner testified that he was discharged and told to manage his symptoms at home (AT 21)

On 11/19/21 the Petitioner was seen by Dr Michael Comerford, MD. The Petitioner had an echocardiogram at Memorial Medical Center, which was read as suspicion for possible RV thrombus. Subsequently, the Petitioner underwent cardiac MRI at Memorial Medical Center, which was negative for any thrombus/mass. The Petitioner was noted to have normal LV systolic function. Borderline RB systolic dysfunction was noted. RVEF of 47%. The Petitioner had episodes of atypical chest pain while in the hospital. He underwent stress test today, which revealed normal exercise capacity. No evidence of ischemia. The Petitioner was reassured Overall, he reports doing well. He denies any chest pain or shortness of breath currently. (Pet. Exh. 5).

On 11/23/21 the Petitioner was seen by Michael Comerford, MD. The Petitioner has been given these follow-up instructions. Includes Petitioner education materials and information regarding your injury/illness. COVID is a virus - nothing treats a virus but time - while your body fights it, we do treat the symptoms. (Pet. Exh. 5).

On 11/21/21 the Petitioner was seen by Kimberly Martin NP-C. The Petitioner was presented to the emergency room with complaints of symptoms of COVID-19. He is COVID-19 positive as of a week ago. The noted indicates the Petitioner is a firefighter. Most bothersome symptoms are low back pain, cough, overall

malaise. Denies recent fevers. No sore throat, chest pain, shortness of breath, abdominal pain, or vomiting. He has intermittent nausea and loose stools. He states his most bothersome symptoms are the cough and the low back pain. No seasonal allergies (Pet. Exh. 4).

The Arbitrator notes that the medical care and treatment to the Petitioner after the November 2021 hospital stays were continuous and consistent for the Covid-19 condition the Petitioner contracted at work for the Respondent. The only medical opinion in this case is that of Dr. David Fletcher.

Dr. Fletcher diagnosed the Petitioner with acute COVID-19 infection with features of long COVID, involving the cardiovascular and respiratory systems, obstructive sleep apnea. Dr. Fletcher further opined that Petitioner's diagnosis of COVID was directly related to his occupational exposure.

The Respondent offered no evidence to refute the opinions of Dr. Fletcher.

Wherefore, the Arbitrator finds that the Petitioner's conditions of ill-being are directly related to the described work injury in this case.

ISSUE J: Were the medical services that were provided to Petitioner reasonable and necessary?

The Arbitrator incorporates the findings as it relates to accident and causal connection into the issue of medical expenses. Thus, all the medical expenses incurred by the Petitioner for treatment of his COVID diagnoses are related to the work accident in this case.

Wherefore, the Arbitrator orders the Respondent to pay all reasonable, necessary and causally related medical and hospital bills in this case. The Arbitrator finds that the Respondent is to pay the medical bills as outlined in Petitioner's Exhibit 11.

Issue K: What temporary benefits are in dispute? TTD

The Arbitrator incorporates the findings as it relates to accident and causal connection into the issue of temporary total disability benefits. The evidence establishes that the Petitioner was off work due to his work accident from 11/17/21 through 1/12/22.

Wherefore, the Arbitrator orders the Respondent to pay the Petitioner temporary total disability benefits for 8 weeks, from 11/17/21 through 1/12/22.

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 standard to this claim, the Arbitrator makes the following findings listed below.

With regard to Sec. 8.1(b) (i); the Arbitrator notes that there was no impairment rating performed on the Petitioner in this case. This factor will not be given any weight.

With regard to Sec. 8.1(b) (iii); the Arbitrator notes that the Petitioner was 38 years old at the time of the injury. This factor weighs moderately in the favor of the Petitioner.

With regard to Sec. 8.1(b) (iv); the Arbitrator notes that the Petitioner did not lose earnings as a result of the work injury. The Arbitrator gives no weight to this factor.

With regard to Sec 8.1(b) (v); the Arbitrator notes that the Petitioner was diagnosed with COVID-19 infection with features of long COVID, involving the cardiovascular and respiratory systems, obstructive sleep apnea.

The Petitioner testified that as a result of his COVID diagnosis, he was diagnosed with sleep apnea and received treatment for that (AT 30). The Petitioner further testified that he was referred to an ENT specialist because he developed audible breathing/wheezing (AT 30). During one of the CT scans, a spot was found between Petitioner’s heart and lungs (AT 30)

The Petitioner testified that prior to November 10, 2021, he did not have any of the symptoms he had developed from his COVID diagnosis (AT 38).

Dr. Fletcher diagnosed the Petitioner with acute COVID-19 infection with features of long COVID, involving the cardiovascular and respiratory systems, obstructive sleep apnea. Dr. Fletcher further opined that Petitioner’s diagnosis of COVID was directly related to his occupational exposure (Pet. Exh. 6).

Wherefore, the Arbitrator finds that the Petitioner is entitled an award of 8% loss of use of the Man As A Whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC011608
Case Name	Shaun Shaw v. City of Springfield
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	25IWCC0407
Number of Pages of Decision	7
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	L. Robert Mueller

DATE FILED: 9/30/2025

/s/Maria Portela, 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

Shaun Shaw,

Petitioner,

vs.

NO: 23 WC 011608

City of Springfield Fire Department,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 7, 2024 is hereby affirmed and adopted.

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

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

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.

SEPTEMBER 30 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	23WC011608
Case Name	Shaun Shaw v. City of Springfield
Consolidated Cases	22WC001450;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	5
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	L. Robert Mueller

DATE FILED: 8/7/2024

/s/Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF AUGUST 6, 2024 4.70%

11608

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**

Shaun Shaw

Employee/Petitioner

v.

City of Springfield Fire Department

Employer/Respondent

Case # **23** WC **0011608**

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 **6/28/24**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **5/01/23**, 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.

In the year preceding the injury, Petitioner earned **\$90,423.12**, **the average weekly wage was \$1,738.91**

On the date of accident, Petitioner was **40** years of age, *married* with **4** dependent children.

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

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

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

ORDER

Petitioner's claim for medical benefits and permanent partial disability benefits is denied.

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

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

Edward. Lee
Signature of Arbitrator

August 7, 2024

On 5/01/23 there was a multicar accident on Interstate 55 south of Springfield. Petitioner's rig responded to the scene. There was a significant amount of wind and dust and multiple active fires. There was quite a bit of exposure with breathing and the eyes to dust. His shortness of breath became more extreme and he noticed irritation to his eyes. He went to St. John's emergency room. His lungs were evaluated as were his eyes. Scratches were found in the eyes and he was given medication. He followed up with Dr. Sreedhar for his lungs. Petitioner indicated he still actively sees Dr. Sreedhar. Within the last six months, the doctor has ordered another CT scan. He also ordered another pulmonary function study. With regard to the spot or mass noted by Dr. Sreedhar on the CT scan, it is at the thymus gland. Petitioner indicated that he is scheduled to have another CT scan with regard to the mass as a follow up because there is a wide range of what it could be.

Since 5/01/23 he has been able to do his duties as a firefighter for the City. Presently, Petitioner testified that he still has shortness of breath at times. He is on a couple of different inhalers plus a nasal spray to see if that might alleviate anything. He has a continuous cough on a daily basis. He can hear himself audibly breathe with wheezing. He is having some of the symptoms they told him he would have with the mass, a choking sensation or pressure in the area. Petitioner indicated he never had any of those symptoms prior to his encounter with fellow firefighter Peddycoart on 11/10/21. He does not have any continued symptoms with regard to his eyes at the present.

Petitioner recalled seeing Dr. Comerford two days after the 5/01/23 incident, on 5/03. He remembered advising Dr. Comerford at that time that he wanted to go back to work. He did do so on 5/04/23.

Following the 5/01/23 incident, Petitioner was seen in the emergency room of St. John's Hospital that same day. With regard to his eyes, he had bilateral irritation likely due to a corneal abrasion. There was no foreign body in either eye. The review of systems under respiratory indicates that he was positive for cough but negative for shortness of breath and wheezing (PX2). He followed up with Dr. Comerford on 5/03/23, at which time he requested to return to work based on his current symptoms being at baseline (RX9). The following day, 5/04/23, Petitioner saw Dr. Sreedhar as a new patient. Dr. Sreedhar noted severe obstructive sleep apnea and obesity. He noted shortness of breath and mild interstitial lung disease which could be secondary from COVID19 infection. He noted that Petitioner was a COVID long-hauler. Dr. Sreedhar also mentions allergic rhinitis and says Petitioner has been referred to him for shortness of breath and sleep disorder breathing. The note reflects that two days ago Petitioner was exposed to dust and fumes and developed bronchitis. Dr. Sreedhar referred Petitioner for a CT scan of the chest and a pulmonary function study (RX4).

The pulmonary function study was performed on 5/25/23. The results revealed normal pulmonary function which did not respond to an inhaled bronchodilator. There was no evidence of gas transfer impairment (RX5). The CT scan was done on 6/07/23 and noted that there was no correlation in the findings for Petitioner's chronic shortness of breath. The CT scan did note a mediastinal pre-vascular ill-defined soft tissue density, which was thought to represent thymic tissue (PX3). Dr. Sreedhar's note indicates that the CT scan was done to see if Petitioner had interstitial lung disease from COVID, but there were no pulmonary infiltrates. He noted an enlarged thymus gland. The doctor's assessment was thymic hyperplasia versus upper mediastinal lesion. He also diagnosed shortness of breath, obstructive sleep apnea, obesity, rhinitis with deviated nasal septum, and COVID long hauler (RX6). Petitioner had another CT scan of the chest on 9/27/23. The radiologist noted a stable ill-defined soft tissue density, which he felt was favored to represent rebound thymic tissue. There were stable small pulmonary nodules (RX7). Dr. Sreedhar saw Petitioner again on 9/14/23. The same diagnoses are noted as had been present on 6/14/23. The doctor indicated he was referring Petitioner to an ENT for evaluation of his persistent rhinitis and deviated nasal septum. He also indicated he would refer Petitioner to a thoracic surgeon depending upon the CT scan with regard to the thymic hyperplasia/upper mediastinal lesion. Dr. Sreedhar saw Petitioner again on 12/07/23. It appears Petitioner was last seen by Dr. Sreedhar on 6/06/24 and the assessment was long COVID, severe sleep apnea, and thymus hyperplasia. Another CT scan had been done

on 4/25/24 revealing unchanged small pulmonary nodules and the suspected thymic tissue in the anterior mediastinum (PX3).

With regard to accident (C) causal connection (F), and medical (J), the Arbitrator finds as follows:

With regard to the 5/01/23 claim, Petitioner was exposed to wind and dust at the scene of a multi-vehicle accident. He was seen in the emergency room that day and by his family doctor on 5/03/23. On this latter date, Petitioner told Dr. Comerford that his symptoms were back to baseline and he requested a return to work. Petitioner did return to work the following day and has continued to work as a firefighter since then. In his 5/04/23 note, Dr. Sreedhar seems to mention the 5/01/23 incident in passing. Dr. Sreedhar addresses Petitioner's chronic problems from 5/04/23 forward.

The Arbitrator finds Petitioner did sustain an accident on 5/01/23, but any symptoms from that event were extremely temporary in nature. The Arbitrator finds that Petitioner's present condition of ill-being is not related to the 5/01/23 accident.

Based upon the Arbitrator's finding with regard to causal relationship concerning the 5/01/23 claim, the Arbitrator does not need to address the nature and extent issue. With regard to the medical issue, the Arbitrator finds that the only bill that possibly is related to the 5/01/23 claim is the SIU Pulmonology bill from 5/04/23. As noted above, however, Dr. Sreedhar pays little attention to that particular incident and is paying attention to Petitioner's chronic problems. The Arbitrator does not see a bill from the hospital emergency room from 5/01/23 and does not see a bill from Dr. Comerford for the visit on 5/03/23. Therefore, the Arbitrator finds that the Respondent is not responsible for any of the introduced medical bills in Petitioner's Exhibit 11 on this 5/01/23 claim.