

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	18WC023751
Case Name	Neuri Sanchez v. Senior Flexonics
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0030
Number of Pages of Decision	23
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Mark Maritote
Respondent Attorney	Olga Sheinman

DATE FILED: 2/2/2026

/s/ Raychel Wesley, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NEURI SANCHEZ,

Petitioner,

vs.

NO: 18 WC 23751

SENIOR FLEXONICS,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of whether Petitioner's right shoulder condition is causally related to her April 25, 2018 work accident; whether Petitioner obstructed the January 8, 2020 §12 examination, entitlement to Temporary Total Disability benefits; entitlement to incurred medical expenses; and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, corrects the Decision of the Arbitrator as set forth below but otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Correction

The Commission corrects the clerical error in the Decision to reflect the second period of Temporary Total Disability terminates on May 13, 2019. The Commission further corrects the Decision to reflect the awarded periods of TTD benefits total 59 1/7 weeks:

November 8, 2018 through December 12, 2018	5 weeks
April 10, 2019 through May 13, 2019	4 6/7 weeks
July 16, 2020 through June 25, 2021	49 2/7 weeks
Total	59 1/7 weeks

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 19, 2025, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$470.00 per week for a period of 59 1/7 weeks, representing November 8, 2018 through December 12, 2018; April 10, 2019 through May 13, 2019; and July 16, 2020 through June 25, 2021, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of \$4,918.70 for TTD benefits already paid.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of \$30,264.04 for medical expenses, as provided in §8(a), subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$423.00 per week for a period of 200 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 40% loss of use of the person as a whole.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court

February 2, 2026

RAW/mck

/s/ *Raychel A. Wesley*

O: 12/10/25

/s/ *Carolyn M. Doherty*

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/s/ *Frank J. Soto*

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC023751
Case Name	Neuri Sanchez v. Senior Flexonics
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeffrey Huebsch, Arbitrator

Petitioner Attorney	Mark Maritote
Respondent Attorney	Olga Sheinman

DATE FILED: 3/19/2025

/s/ Jeffrey Huebsch, Arbitrator
Signature

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

N. Sanchez v. Senior Flexonics, 18 WC 023751

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**

NEURI SANCHEZ

Employee/Petitioner

v.

SENIOR FLEXONICS

Employer/Respondent

Case # **18** WC **023751**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeffrey Huebsch**, Arbitrator of the Commission, in the city of **Chicago**, on **November 21, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ 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 **Has Petitioner exceeded her two choices of physicians?; Obstruction of Section 12 examination.**

FINDINGS

On **April 25, 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.

The Parties stipulated that Petitioner's average weekly wage was **\$705.00**.

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

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

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

Respondent shall be given a credit of **\$4,918.70** for TTD, **\$0** for TPD, **\$ 0** for maintenance, and **\$0** for other benefits, for a total credit of **\$4,918.70**.

Respondent is entitled to a credit of **\$10,525.00** under Section 8(j) of the Act and as is set forth below.

ORDER

Respondent shall pay shall pay reasonable and necessary medical expenses of \$30,264.04, pursuant to the Medical Fee Schedule, in accordance with Sections 8(a) and 8.2 of the Act, and as is set forth below.

Respondent shall pay Petitioner temporary total disability benefits of \$470.00/week for 56-2/7 weeks, commencing 11/8/2018-12/12/2018 and 4/10/2019-5/3/2019 and 7/16/2020-6/25/2021, in accordance with Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$423.00/week for 200 weeks because the injuries sustained caused the 40% loss of use of the person as a whole, in accordance with Section 8(d)2 of the Act.

Respondent shall pay Petitioner the compensation benefits that have accrued from 4/25/2018 through 11/21/2024 in a lump sum, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

March 19, 2025

INTRODUCTION

This case was tried on November 21, 2024. At the close of proofs, the Parties agreed to supplement the Record by agreeing to the period of lost time after reviewing Respondent's attendance records regarding Petitioner and confirming which medical bills were unpaid (Dr. Alpert had changed practices and his bills appear to contain duplicate billings). (T. 135-136).

The Parties filed an agreement in CompFile on January 2, 2025, regarding the time that Petitioner was off work (11/18/2018-12/12/2018; 4/10/2019-5/13/2019 and 7/16/2020-11/21/2024 (the date of trial). The Parties filed another agreement in CompFile on January 22, 2025, stating that Petitioner is withdrawing the bills from Midwest Bone and Joint, since it is a duplicate of the Fox Valley Orthopedics bill. Respondent agrees to pay the Fee Schedule amount of the Fox Valley Orthopedics bill. These documents are contained in CompFile and will be included in the Record of this matter, following ArbX 1, the Request for Hearing Form.

At the start of the trial, it was noted that Petitioner's prior attorney, James Leahy, had filed a Petition for Fees, which had been continued to the disposition of the case on June 23, 2023, per the Arbitrator's statement on the record, but May 16, 2023, per CompFile. A record was made regarding a hearing by Arbitrator Watts on December 19, 2023, on Respondent's Motion to Dismiss For Want of Prosecution. The transcript of this hearing was not submitted by the Parties.

The Arbitrator notes that PX 7 contained Petitioner's Social Security number, which was redacted by the Arbitrator. The Parties are reminded of their SCR 138 obligations.

FINDINGS OF FACT

Testimony, Video and Audio Evidence:

Petitioner testified via a Spanish/English interpreter. Petitioner was advised by the Arbitrator that the lawyers ask a question in English, the interpreter translates the question from English to Spanish, Petitioner should answer the question in Spanish and then the interpreter will state the answer in English for the attorneys and the court reporter. (T. 12). On several occasions, Petitioner was instructed to answer the question that the lawyer put to her. By page 22 of the transcript (8 pages of direct examination), Petitioner had testified that she did not remember or did not recall some 10 times. The Arbitrator ceased counting such responses at that point. The transcript, and the Arbitrator's notes show that Petitioner answered a question with a "yes" (T. 72) and a "yeah" (T. 90). Petitioner also answered a question about meeting a coworker in Mexico before the question was translated. (T. 100-101).

At the time that Petitioner was sworn in, Respondent requested that the record show that Petitioner positioned her right arm/elbow proximal to her body at her abdomen/axial line, supporting her right arm with her left arm and with her hand at a 90 degree angle fully extended at about the shoulder level. (T. 12-13).

Petitioner testified that she was presently 58 years old. She was born in Mexico. She completed high school in Mexico and came to the United States in 1986, after working at a bank "opening up investments." (T. 14-16). She received a certificate in accounting in Mexico, per the testimony of Edward Pagella. (PX 17, p. 10). She has been a United States citizen for 3 years. Prior to working at Respondent, Petitioner worked at a plastics factory, doing packing. (T. 16-17).

Petitioner is right hand dominant, per the report of Julie Bose (RX 7) and some of the medical records.

Petitioner was employed by Respondent beginning in October of 1999. Her jobs included machine operator, assembler and, sometimes, welder. (T. 17-19). These jobs required the use of both hands and arms. Assembly required use of the shoulder. (T. 19-20). She worked six days a week. (T.21).

Petitioner denied any work injuries at Respondent prior to April 25, 2018. She could not recall seeking or receiving medical treatment for her right shoulder prior to April 25, 2018. (T. 20-21).

The Parties stipulated that Petitioner sustained accidental injuries which arose out of and in the course of her employment by Respondent on April 25, 2018. Petitioner testified that she was assembling and a part got stuck. She felt pain when she tried to lift the part. She advised her supervisor, Oliverio Bello. Petitioner testified that the pain got worse, but she did not receive medical attention on the date of accident because Respondent's safety person wasn't there and she could not get medical attention until a report was done. (T. 22-25).

Respondent sent Petitioner to Physician's Immediate Care (PIC) on the following Monday. The Arbitrator notes that April 25, 2018 was a Wednesday and the following Monday was April 30, 2018. This is the first day that Petitioner was seen at PIC, per PX 1. Petitioner testified that She had a heavy pain in her shoulder at that time. At PIC, Petitioner was seen by a PA, who diagnosed a right shoulder sprain and returned Petitioner to full duty work, with a follow-up with a physician on May 2, 2018. (PX 1, 18-22). She was given pain medication and an x-ray. Petitioner participated in therapy through PIC and was referred for an MRI.

Petitioner testified that after the MRI, she was referred by PIC to Dr. Suchy, who referred her to Dr. Alpert. (T. 29-30). PX 14 was the records from Center For Sports Orthopedics (Dr Suchy's office), which show that Petitioner was seen by Dr. Komnick at that office three times, and was recommended to get a second opinion or an IME when she was last seen on October 9, 2018. (PX 14, p 6-7, T. 60-61).

Petitioner was next seen by Dr. Alpert (she did not recall if this was at Fox Valley Orthopedics or at "Midwest Orthopedics"). Dr. Alpert performed surgery in November at Algonquin Road Surgery Center and Petitioner then underwent therapy ordered by Dr. Alpert. She was off work for about a month and then returned to work for Respondent at restricted duty. A repeat MRI was ordered, but Petitioner did not recall which physician ordered the study (Dr. Alpert or Dr. Chhadia). (T. 30-35). At the time that Petitioner stopped treating with Dr. Alpert, her pain continued and she had less strength. (T. 38).

Petitioner testified that she next saw Dr. Chhadia on a referral from her PCP, Dr. Mario Astacio. (T. 35). Dr. Chhadia performed two surgeries on Petitioner's shoulder. (T. 39-41).

Petitioner testified that she does nothing with her right arm. The third surgery did not help much. Petitioner did not recall when she last saw Dr. Chhadia. Dr. Chaddia released her to return to work with restrictions of no pushing, no pulling, no carrying more than 5 pounds. Petitioner testified that with those restrictions, she could not return to work at Respondent as a machine operator, an assembler, or as a welder. (T. 43-44).

Petitioner testified that her shoulder hurts a lot. It hurts more now than it did the last time that she saw Dr. Chhadia. She takes Tylenol, 3 times a week, for the pain. (T. 440-45).

On cross-examination, Petitioner testified that she was trying to get a part out of a machine when she injured her shoulder. (T. 48-49). Petitioner answered that she did not recall on many of the questions that were put to her on cross-examination.

When asked if between May 21, 2018 and July of 2018, she had gone to Mexico, her response was: “I don’t recall the dates. I don’t recall if I’ve left.” (T. 53). Based on other evidence in the Record, the Arbitrator finds that Petitioner traveled to Mexico to be with her sick father during this time. Further, she had a shoulder injection in Mexico, per her answering a question by her lawyer by nodding (T. 119) and per Dr. Komnick’s August 14, 2018 chart. (PX 14).

Petitioner testified that she chose to see Dr. Izquierdo on her own. There was no referral from a physician. (T. 70). Dr. Izquierdo eventually released her from care and to full duty. (T. 71-72).

Petitioner continued to work for Respondent until the first surgery by Dr. Chhadia. (T. 73, 75). Dr. Chaddia authorized her off work after the first surgery. Petitioner testified that she did not remember if she received short term disability benefits. (T. 75-76). RX 2 and the stipulation of the Parties establishes that Petitioner received \$10,525.00 in STD benefits for the time period of 7/27/2020 to 2/1/2021. Petitioner agreed that Dr. Chaddia released her from care in the summer of 2021. (T. 76).

When questioned about a Section 12 exam that was scheduled with Dr. Verma in January of 2020, Petitioner did not recall receiving a notice of a Section 12 examination with Dr. Verma in January of 2020, did not recall receiving a mileage check and did not remember not seeing Dr. Verma in January of 2020. Petitioner then testified that she thinks that she was seeing Dr. Alpert on that day and she called Dr. Verma’s office to so advise them and cancel the appointment. She got Dr. Verma’s number from: “a card, a paper”. (T. 76-81). The records of Fox Valley Orthopedics do show that Petitioner was seen by Dr. Alpert on January 8, 2020, for her last visit. “Workers’ Compensation was sent a copy of this chart note. (PX 5, 13-14). RX 4 was “1/8/2020 IME w/Dr. Verma No Show Info”. It appears that Petitioner’s former counsel was faxed a copy of the Section 12 letter regarding the 1/8/2020 Dr. Verma appointment on 12/19/2019. (RX 4).

Petitioner testified that she needs assistance from her other hand to lift her right arm to shoulder level. She cannot raise her right arm above shoulder level. She can hold her cellphone to her right ear with help, but not for long. She drives for 2 minutes to the bank or the supermarket. If she drives for 15-20 minutes, it is painful. (T. 81-84).

Petitioner testified that she looked for work after being discharged by Dr. Chhadia. She applied in all the agencies. She has a list, but she didn’t bring it to the Arbitration hearing. She applied for Social Security Disability in 2021. She did not recall the date, but she was approved for benefits. (T. 85-86).

Petitioner did not testify that she contacted Respondent regarding return to work after being released by Dr. Chhadia. Respondent did not present any evidence that it offered Petitioner any job after she was released from care by Dr. Chhadia.

Petitioner testified that she understands a bit of English, but she doesn’t speak it. She identified her handwriting on RX 9, a job application (in English) that was filled out in 1999. Petitioner attended an English as a Second Language class while working for Respondent. When she worked for Respondent, there were supervisors that spoke Spanish and ones who did not speak Spanish. Petitioner was able to call in to Respondent’s attendance line. She left a message, via “supposedly, my English.” Petitioner was questioned about a conversation at a company event for Respondent in Columbus Ohio and a conversation with a supervisor at the airport in Mexico City. (T. 97-101). Petitioner agreed that she completed QA reports as a part of her job at Respondent. (T. 113).

On re-direct examination, Petitioner agreed that she speaks some English. She can hold a short conversation. (T. 115-116).

Respondent presented the testimony of Bozena Siemion. Ms. Siemion is employed by Respondent as a human resources generalist. Respondent is self-funded for short term disability. The benefits are not paid if an employee receives workers' compensation benefits. Respondent's group health carrier is Aetna. Group health benefits are not paid if workers' compensation pays. (T. 120-136).

The Parties stipulated to the admission of RX 17, 3 calls from Petitioner to Respondent's attendance line. (T. 144). The first call is 10/11/2018 and Petitioner identified herself and she worked second shift and her supervisor was Jim. She wanted to take PTO. On 10/21/2019, she called in asking James for PTO. On 11/7/2019, Petitioner called in to James and reported that she was no working today because of pain in my arm. She requested (unintelligible) or PTO. (RX 17).

Respondent submitted the testimony of Nathan Bishop, production supervisor and production planner for Respondent. He has been employed by Respondent for 32 years. He communicated with Petitioner at work in English. Bishop had a conversation with Petitioner in English at the Mexico City Airport in 2016. (T. 146-153). Cross-examination and further re-direct confirmed that Bishop's conversations with Petitioner were short (3 to 5 minutes) and when she returned to work in the fall of 2019, she would advise Mr. Bishop that a certain job caused her pain and he would assign her to a different job. (T 153-159).

Respondent submitted the testimony of James Davis. Davis has been employed by Respondent for 6-1/2 years. He was Petitioner's supervisor. He does not speak Spanish. His conversations with Petitioner were in English. He recalled a company outing in Columbus where Petitioner spoke in English. This was a group conversation. (T. 160-165).

Respondent submitted the testimony of Miles Angerman, an investigator who observed and videoed some of Petitioner's activities in September of 2024. Angerman observed Petitioner going to The Centre of Elgin on September 12, 2024 and September 17, 2024.

The surveillance was admitted as RX 15. Petitioner drove herself to The Centre (about 15-20 minutes) and is seen to walk/jog around a track, swinging both arms at a fast pace. Petitioner is seen to be talking on her cellphone, holding the phone with her right hand to her right ear. She does switch hands as she walks around the track. She does not lift her right arm beyond the plane of the shoulder while walking on the track. On September 17, 2024, Petitioner is seen to pick up a water bottle from her car trunk with her left hand and close the trunk lid with her right hand. Her right arm is above the plane of the shoulder when she closes the trunk. On September 20, 2024, Petitioner is seen driving to Dick's Sporting Goods, (a 20-30 minute trip in the car) and is seen trying on a sling for her right arm. Petitioner does not appear to be in pain or distress on the video.

Petitioner submitted the evidence deposition of Edward Pagella, MS, CRC, LCPC, taken on October 8, 2024, as PX 17. Pagella has been a Certified Rehabilitation Counselor since 1987. He provides vocational rehabilitation services and counseling and provides forensic opinions, such as in this case, and has for 34 years assisted "Federal Judges" in making determinations regarding the employability of individuals based upon their physical and/or mental limitations. (p. 5-6). Pagella referenced 34 years of testimony in Federal cases (Social Security Disability Claims?) four more times in his testimony of 65 pages, one of which was stricken. Mr. Pagella's report was admitted at the deposition and was admitted at trial as PX 17A. Pagella reviewed and relied upon Dr. Chhadia's deposition (PX 18), and medical records, along with his interview of Petitioner on August 6, 2024 in rendering his opinions. Mr. Pagella opined that Petitioner was completely and totally disabled because she was unskilled, had no transferable skills and the work restrictions placed upon her placed her at the less than sedentary level. (p. 12-13).

On cross-examination, Mr. Pagella was asked several questions that called for a yes or no response and he answered with volunteered narratives, which are not necessarily persuasive to the finder of fact. (p. 30-41). Pagella was not aware that Petitioner applied for SSDI before Dr. Chhadia released her from care, with permanent restrictions. Pagella did not ask Petitioner about what she did for the 3 years between Dr. Chhadia's release and her meeting with him. When asked : "Did you ask her if she tried to find any job?", Pagella responded: "No, because she was in a lot of pain. (p. 42). He did not know if Petitioner had completed her job application in English in 1999 and did not know if she had indicated that she had some English skills. (p. 47-48).

As a vocational counselor, Mr. Pagella looks at the medical endpoint (which in this case would be the June 25, 2021 release by Dr. Chhadia). (p. 53).

PX 17A was Mr. Pagella's report, dated August 7, 2024. The Arbitrator notes that while Mr. Pagella testified that Petitioner did not go to high school in Mexico (but did receive a certificate in accounting from an academy), the report, like Petitioner's testimony and RX 7, the report of Julie Bose, establishes that Petitioner graduated from high school in Mexico and received a certificate in accounting from an academy. Mr. Pagella opined that Petitioner is not a vocational rehab candidate, there was no stable viable labor market for her and she is, therefore, totally disabled. She has a limited vocational profile and physical limitations placing her at the less than sedentary functional level. Petitioner is totally disabled from working, as no suitable or viable occupation exists for an individual with her vocational profile and physical limitations. (PX 17A).

PX 18 was the evidence deposition of Dr. Ankur Chhadia (misidentified as Chaddia in the deposition, happily, the doctor was not asked to spell his last name when he identified himself) (p. 7), taken on October 16, 2023. Dr. Chhadia is a Board Certified orthopedic surgeon. He was fellowship trained in sports medicine at Kaiser Permanente. (p. 5-6). Dr. Chhadia provided a summary of the shoulder's anatomy and the difference between a shoulder MR arthrogram and a shoulder MRI. (p. 7-12). Dr. Chhadia testified that he disagreed with the opinion that the 4/5/2019 MRI showed an intact rotator cuff. (p. 16-17). Dr. Chhadia testified that he performed surgery on Petitioner's right shoulder in July of 2020 (July 16, July 20, July 7 ?). The surgical findings included a supraspinatus rotator cuff tear, subacromial bursitis, labral tearing, retained suture, adhesions and labral fraying. (p. 18-19). The rotator cuff integrity of the prior repair was not adequate and the tendon quality of the repair was poor. (p. 21). The revision surgery resulted in persisting non-healing of the tendon, causing it to come apart. (p. 23). Dr. Chhadia performed the number 3 surgery (his number 2) on Petitioner's shoulder in December of 2020. This was an attempt to improve her persisting right shoulder pain and weakness and to address her rotator cuff insufficiency. The procedure was a superior capsular reconstruction. (p. 24). Petitioner's last office visit with Dr. Chhadia was on June 25, 2021. At that point, the patient said that she was improving. Range of motion was improved, and she had moderate pain with certain activity and limited strength. She was at MMI and had permanent work restrictions of no overhead lifting, no lifting over 5 pounds. (p. 25).

On cross-examination, Dr. Chhadia confirmed that he did not review prior medical records. He was not aware of the prior invalid FCE results. His first office visit with Petitioner was 9/25/2019 and it was noted that he also diagnosed cervical radiculopathy at that time. Petitioner had pain on the first visit and on the last visit. The treatment provided to Petitioner did not result in any benefit in terms of her work status. (p. 37-40). Her range of motion was worse in June of 2021 than it was in September of 2021.

Respondent raised a Ghere objection to Dr. Chhadia's causation opinion, which was sustained. (p. 19). Ghere v. Industrial Comm'n, 278 Ill. App. 3d 840 (1996). Subsequently, Dr. Chhadia testified that the findings of the 10/26/2020 arthrogram were related to Petitioner's initial injury. (p. 23-24). He also testified that the surgeries of 2020 were necessary to help cure Petitioner of the difficulties of her injury. (p. 61-62).

Respondent submitted the evidence deposition of Dr. Nickhil Verma, taken on March 1, 2023, as RX 8. Dr. Verma is a Board Certified orthopedic surgeon, with a sub-specialty in sports medicine and the shoulder. He was fellowship trained in sports medicine at Rush and the shoulder at the Hospital for Special Surgery in New York. (p. 6). Dr. Verma examined Petitioner on May 10, 2021. He also reviewed medical records and the 7/3/2018 MRI, the 10/15/2018 MR arthrogram and the 4/5/2019 arthrogram. His diagnosis was persistent right shoulder pain, status post superior capsular reconstruction. He thought that there was a poor prognosis for Petitioner, secondary to 3 surgeries, with persistent pain and functional deficit without material benefit. He thought that Petitioner was at MMI as of the May 22, 2019 FCE. Petitioner had a partial rotator cuff tear as a result of the work injury. She received appropriate treatment, including the surgery by Dr. Alpert. She had persistent complaints of pain, with a fairly normal exam and an invalid FCE. The last MR arthrogram shows that the tendon had healed. The subsequent revision procedures by Dr. Chhadia were unnecessary and unrelated to the work accident and resulted in a worsening of the condition. (p. 14-15). Petitioner did not have a preexisting condition that the accident aggravated. (p. 15). The treatment by Dr. Alpert was appropriate. No further anatomic abnormality was noted on the MRI scan. She had an invalid FCE, which further substantiated that the complaints were primarily subjective in nature. (p. 16). Dr. Verma did not see an indication for Dr. Chhadia's surgery. The rotator cuff was worsened by the #2 surgery, necessitating the #3 surgery. (p. 16). Dr. Verma placed work restrictions on Petitioner: 5 pound lifting, no repetitive overhead activity, full duty pending an MRI. (p. 16-17). These restrictions are not related to the work accident. (p. 17). "If you continue to operate without pathology on an objective study for subjective complaints, that it's highly unlikely that we will recognize meaningful benefit." (p. 22).

On cross-examination, Dr. Verma explained causation regarding Petitioner's condition as: "the patient had an injury that I opined is related to a work event. She had appropriate treatment for that injury. By all medical evidence, she reached MMI and had an appropriate functional recovery despite subjective pain. She then saw a third opinion surgeon, who recommended a surgery that didn't have a medical indication basis that has now resulted in a new condition that is in fact worse or changed the condition for which she was initially treated. (p. 43). On re-direct, Dr. Verma stated that the findings after the first surgery showed a normal postoperative appearance, which would be compatible with normal function. (p. 45).

Respondent submitted the evidence deposition of Julie Bose, MS, CRC, LCPC, taken on November 6, 2024 as RX 8. Bose has 40 years vocational counseling experience, including providing vocational expert testimony in Social Security matters. (p. 7-8). She was retained by Respondent to provide a vocational rehabilitation file review and labor market survey regarding Petitioner. (p. 10). Bose noted Petitioner's residual functional capabilities including avoid overhead activities and a 5 pound lifting restriction. Petitioner can't return to her prior job, but is employable. (p. 15). Petitioner has a strong work history and jobs were available to her, even with her limits on speaking English and limited physical abilities. (p. 15-25). On cross-examination, it was confirmed that Ms. Bose had reviewed the SSDI decision. She did not speak to Petitioner. She did not meet Petitioner. She did not provide counseling or job placement procedures to Petitioner. (p. 45-48).

RX 7 was Ms. Bose's April 15, 2024 report. There were entry-level jobs available for Petitioner: light office cleaning, bench assembler, machine operator (obviously with less weight and overhead tasks than at Respondent's job), packer, hostice, receptionist at a Spanish establishment (Peticioner was primarily Spanish speaking). The median entry-level wage was \$16.77 per hour.

Medical Records Summary:

The treatment that Petitioner had for her work-related right shoulder injury was outlined in the testimony of Petitioner and Drs. Chhadia and Verma.

On April 30, 2018, Petitioner began treatment at Physician's Immediate Care ("PIC"). She complained of pain in the right shoulder since a work injury on April 25, 2018. She was lifting a metal part that weighs about 19 pounds when she suddenly felt a sharp pain in her right shoulder. She had no similar problems in the past. X-rays of the right shoulder were normal, and she was diagnosed with a shoulder sprain. She was released to full duty work by a PA. While treating at PIC, she received 2 steroid injections and appeared to be improving. On May 14, 2018, Petitioner reported feeling much better with no pain unless lifting her arm above head. (PX 1).

On May 21, 2018, oral steroid was suggested but deferred by Petitioner, an MRI was ordered, and she was placed on restrictions of 20 pounds lifting with the right arm. The MRI was completed at Smart Choice MRI on July 2, 2018. The study showed a 50% thickness tear of the supraspinatus tendon and some arthrosis. (PX 3, 13-14). At the July 9, 2018 visit, Petitioner reported recent travel to Mexico; and physical therapy was ordered. Petitioner released to work with no overhead work with right arm, due to the 50% supraspinatus tear. (PX 1).

On May 30, 2018, Petitioner was noted to have left the country for "family personal issues". The MRI was approved on June 4, 2018, but Petitioner was "still out of the country". On June 14, 2018, Petitioner indicated her planned return on June 20, 2018, but she could not be reached until June 28, 2018 for scheduling. (PX 1, 102-104).

Petitioner attended physical therapy at Athletico beginning July 11, 2018. She reported her job required lifting and carrying up to 20 pounds, bilaterally. (PX 1, 106). Petitioner continued treatment at PIC, reporting swelling in the right arm by August 3, 2018, and on August 6, 2018, she was referred to Dr. Suchy for a consultation due to no improvement with therapy. (PX 1, 148).

On August 14, 2018, Petitioner saw Dr. Keith Komnick (of Dr. Suchy's office, Center for Sports Orthopedics) for right shoulder pain ongoing since an April 2018 work injury after lifting a cooler weighing approximately 20 pounds. She had 2 injections in the clinic and another one in Mexico and 4 weeks of physical therapy, with a recent MRI showing a partial supraspinatus tear. Dr. Komnick administered a steroid injection, ordered more therapy and released Petitioner to modified duty. (PX 14, 10-11). Petitioner returned to Dr. Komnick on two additional occasions: 9/11/18, reporting that 10 pounds and no overhead activities restrictions do not aggravate her condition and that she had only temporary relief with injection. She was not interested in surgery, and none was recommended. On 10/9/18, Petitioner complained that therapy was making her worse. She was tender in all planes in similar amounts, the case was discussed with Petitioner and a nurse case manager and a second opinion or IME was recommended, along with an MR arthrogram and continued work restrictions. (PX 14, 6-9).

Petitioner had the MR arthrogram of right shoulder at CDI Lake in the Hills on October 15, 2018. The study showed a tear in the supraspinatus tendon at the footprint, with a Type II acromion, some spurring and cysts. (PX 2, 92-93).

Petitioner then began treatment with Dr. Joshua Alpert, at Fox Valley Orthopedics, on October 17, 2018. The history was of a work injury in April of 2018, pulling on a part that got stuck. The MR arthrogram was consistent with full thickness rotator cuff tear. Dr. Alpert offered surgery. Petitioner could return to work with a 10 pound lifting restriction. (PX 5, 72-75).

On November 8, 2018, Petitioner underwent surgery by Dr. Alpert. The procedure was a right arthroscopic rotator cuff repair, subacromial decompression with acromioplasty, labral debridement with biceps tenotomy and open subpectoral biceps tenodesis, with a postoperative diagnoses of 2 cm right rotator cuff tear, superior labral tear, biceps tendinitis and subacromial bursitis with hooked acromion. (PX 2, 105-107).

Petitioner began physical therapy at ATI on November 13, 2018. (PX 2, 112). Petitioner was authorized off work following the surgery through December 10, 2019. (PX 5, 64).

On December 10, 2018, Dr. Alpert authorized Petitioner to return to work with no use of right arm. Petitioner reported that she was feeling much better. Therapy was ordered. (PX 5, 60-62).

Petitioner attended physical therapy at ATI through discharge on 4/4/19. The 3/29/19 ATI progress note shows that Petitioner reported normal range of motion, but had continued soreness. (PX 5, 147). The ATI discharge note on 4/4/19 reflects that Petitioner was using a prescribed cream with soreness and pain which was not sharp overall. There were strength and range of motion deficits noted. (PX 5, 137-138).

Petitioner had complaints of pain as she continued to treat with Dr. Alpert. Dr. Alpert continued to order significant work restrictions. She was given a right shoulder steroid injection on March 4, 2019 and given work restrictions of no use of the right arm. (PX 5, 47-49). On April 1, 2019, Dr. Alpert charted that Petitioner was having pain and weakness. She was doing poorly. She was not improving. The injection helped for one day. An MR arthrogram was ordered and Petitioner was taken off work. (PX 5, 43-45).

On April 9, 2019, the right shoulder MR arthrogram was done at Envision Medical Imaging. It was said to show an intact rotator cuff tendons, intact glenoid labrum, with long head of biceps not well visualized, and a 4 mm intra-articular signal void near the rotator interval. (PX 10).

On April 10, 2019, Petitioner returned to Dr. Alpert still complaining of a lot of pain. On exam, she was able to flex and extend and had 5-/5 rotator cuff strength with pain. She had slightly positive O'Brien's and normal contour of biceps and was neurologically intact. Dr. Alpert's review of the MRI arthrogram of the right shoulder was completely normal. The assessment was status post right shoulder arthroscopic rotator cuff repair and biceps tenodesis with ongoing complaints of pain and a completely normal arthrogram. Dr. Alpert recommended work hardening followed by a functional capacity evaluation. Petitioner was seen with a Spanish interpreter and a nurse case manager. She was to remain off work for the duration of work conditioning and follow up after the FCE. (PX 5, 35-37).

Petitioner attended work conditioning at Athletico from April 19, 2019, through May 9, 2019, returning to Dr. Alpert on May 13, 2019, reporting that she was unable to proceed with work conditioning due to pain. Dr. Alpert noted that Petitioner had full active and passive range of motion, and 4/5 strength with pain. An FCE was recommended, along with an independent medical evaluation. In the meantime, she was released to work with a 10 pound lifting restriction. Petitioner resumed work conditioning through May 9, 2019. The May 2, 2019, status report shows that she was able to lift safely up to 15 pounds but showed regression. (PX 4, 73-75, PX 5, 27-29).

On May 22, 2019, Petitioner underwent a Functional Capacity Evaluation on Dr. Alpert's order. She demonstrated capabilities to function at least within the sedentary physical demand level, lifting up to 10 pounds, but her performance was deemed invalid/inconsistent. Her major limiting factors were reported as overestimation of pain with functional abilities and effort with heart rate and inconsistency with squatting. Her pre-test pain level was reported as 5/10, and post-test 7/10. Petitioner's quality of effort and reliability of pain were noted as significantly lower than expected; resting heart rate of 90 bpm going to 105 bpm at most. (PX 4, p. 48-58).

Petitioner's job description with Respondent was said to require her to operate automated machines loading and unloading materials and monitoring for jamming/malfunctioning; visually inspect completed units and record quality test data in a log or computer as required; notify setup operator and supervisor of problems; and prepare

time and production records, among others. She was required to read, write, add and subtract whole number and follow instructions. The physical demand level included continuously lifting or moving very lightweight material and frequently lightweight. (PX 2, 87-88).

Petitioner's description of being injured when she pulled on a 19 or 20 pound part stands un rebutted.

On June 17, 2019, Petitioner was seen by Dr. Alpert. He noted that Petitioner was tearful and frustrated. She reported being unable to hug a person or work. She had full passive and active range of motion on exam and 5/5 rotator cuff strength, with pain. She had an invalid FCE. Dr. Alpert recommended an independent medical evaluation, and kept the 10 pound lifting restriction in place. The nurse case manager was present. (PX 5, 20-22).

On January 8, 2020, Dr. Alpert saw Petitioner for her final visit with him. Petitioner complained of ongoing pain from her neck through the arm into the hand with numbness and tingling. Petitioner reported seeing Dr. Izquierdo (for an IME, per Dr. Alpert), who released her to full duty work after an invalid FCE, and subsequently seeing Dr. Chhadia, who recommended diagnostic arthroscopy. Petitioner was assessed with right shoulder rotator cuff repair with ongoing pain complaints and invalid FCE, as well as cervical radiculopathy. Cervical ortho consult with Dr. Jacoby was recommended. Dr. Alpert expected Petitioner to have difficulty with return to work, due to pain referred from the neck to right shoulder. The assessment was: right shoulder rotator cuff repair on 11/8/2028 with ongoing complaints of pain and neck pain with right sided cervical radiculopathy. Dr. Alpert released Petitioner to return to full duty work, placing her at maximum medical improvement, regarding her right shoulder. (PX 5, 12-14).

Petitioner sought a second opinion with Dr. Rolando Izquierdo at OrthoIllinois on August 1, 2019. It was noted that she was self-referred. Respondent's nurse case manager sent Dr. Izquierdo 34 pages of records on July 19, 2019, (PX 2, 80) and attended the exam. Petitioner reported a work injury in April 2018, with a metal cooler getting stuck in the machine and causing right shoulder pain. Examination of the right shoulder revealed decreased range of motion and 4/5 strength with no popeye deformity. Dr. Izquierdo's review of the 4/5/19 MR arthrogram was in agreement with the radiologist, there was an intact rotator cuff, with the long head of the biceps not visualized proximally, perhaps due to a tear or prior tenodesis, although tenodesis was not visualized on the study. He thought that the rotator cuff was intact and the supraspinatus was healed. The assessment was pain in the right shoulder. Dr. Izquierdo gave Petitioner a shoulder injection and recommended physical therapy. (PX 2, 16-18).

Petitioner attended therapy at Athletico from August 8, 2019, through August 28, 2019, reporting numbness into right hand. Cervical radiculopathy was suspected. On August 28, 2019, Petitioner reported no shoulder pain at rest but swelling by end of shift and pain from lifting at work. She was noted to present with atypical pain and no progress in functional ROM or strength. (PX 4, 25-44).

Petitioner returned to Dr. Izquierdo on August 29, 2019, reporting worse shoulder pain with no benefit from the injection. Dr. Izquierdo noted that on exam, Petitioner gave inconsistent effort with strength and referred her for an FCE. If it is determined valid, she will be released with permanent restrictions, and full duty work if invalid. Petitioner will be at MMI after the FCE. Until the FCE, she was limited to lifting 5 pounds, no overhead work and no repetitive pushing/pulling. (PX 2, 11-13).

On September 18, 2019, Petitioner was seen at Athletico for a second Functional Capacity Evaluation, on Dr. Izquierdo's order. The FCE report indicated invalid/inconsistent performance, suggesting Petitioner could have performed at markedly higher levels than she was willing. Specifically, Petitioner's AROM was inconsistent throughout testing, grip testing was not reproducible, pain complaints were out of proportion with objective

findings and pain behaviors were exaggerated. Petitioner's heart rate did not increase over 25% over resting on a preponderance of tasks. (PX 2, 22-35, PX 4, 6-19). NCM Mary J. Gallucci faxed the FCE results to Dr. Izquierdo on October 1, 2019. Petitioner apparently did not return to Dr. Izquierdo's office after the FCE. (PX 2, 36).

Following the invalid FCE, on October 7, 2019, Dr. Izquierdo authorized Petitioner to return to full duty work indicating she had reached MMI. (PX 16, 23).

Petitioner began treatment with Dr. Chhadia, at Suburban Orthopedics, on September 25, 2019, reporting an injury on April 23, 2017. (PX 11, 24). Petitioner reported to Dr. Chhadia being off work since March 2019 and complained of burning pain in the AC joint and anterior of the right shoulder, radiating down the right arm, as well as weakness and numbness and tingling to the right hand. She was taking Tylenol. Dr. Chhadia noted limitations in range of motion on the right, tenderness on the right biceps, as well as neck tenderness, decreased cervical range of motion and a positive Spurling's test. His impression was right shoulder rotator cuff tear after prior repair and cervical disc bulge and radiculopathy. Petitioner was to obtain her prior imaging and was given work restrictions of light duty. (PX 11, 24-27).

Petitioner was seen on October 16, 2019 by Dr. Chhadia, who noted her complaints were unchanged, and so was the exam. Dr. Chhadia reviewed an undated MRI, noting intact repair with tendinosis and low-grade partial tear. Injection and revision repair surgery were offered as options. (PX 11, 20-23). Petitioner had similar exams, assessment and recommendations on the November 25, 2019 and December 18, 2019 visits. Petitioner elected to proceed with surgery. (PX 11, 10-19). Petitioner did not have any subsequent treatment until July 16, 2020. Perhaps this was due to group insurance approval delays and the termination of elective surgery due to Covid.

On July 16, 2020, Petitioner underwent a right shoulder revision surgery by Dr. Chhadia at Ashton Center for Day Surgery. The procedure was: 1.) Right shoulder arthroscopic rotator cuff repair, supraspinatus, 2.) Right shoulder arthroscopic extensive debridement of bursitis and labral tearing, 3.) Right shoulder arthroscopic foreign body suture removal, 4.) Right shoulder amniotic biologic insertion (for enhancement of healing and ____ prevention). The postoperative diagnosis was right shoulder rotator cuff tear, supraspinatus, after prior repair, right shoulder subacromial bursitis, right shoulder labral tearing and right shoulder retained suture. (PX 13, 24-26).

Following the surgery, Petitioner was seen on July 22, 2020, for follow up. During Petitioner's next follow-up, on July 29, 2020, she reported noticing a bump on her bicep and bruising in the bicep area despite wearing a sling. Medications were prescribed and Petitioner was to continue with the sling. Petitioner reported ongoing symptoms, including pain, swelling, numbness and tingling on August 21, 2020. (PX 12, 52-53). On September 11, 2020, Petitioner reported swelling under the right shoulder, and it felt warm to touch. She was taking muscle relaxers and oxycodone and her pain was 6/10. Therapy was placed on hold and oral steroids were prescribed. (PX 12, 50-51). Petitioner's symptoms were noted to be worse at her October 7, 2020 visit and a repeat MRI (MR arthrogram?) was ordered. (PX 12, 47-48).

During the October 30, 2020, follow-up, Dr. Chhadia reviewed the October 26, 2020 MR Arthrogram showing a high grade partial articular sided tearing involving supraspinatus at critical zone and footplate, truncation of superior and posterior labrum, non visualization of the long head of the biceps tendon (perhaps due to a tear) and AC joint arthritis. Dr. Chhadia assessed Petitioner with high grade retear with full thickness component. Additional repair with superior capsule reconstruction was recommended. PX 12, 42-44).

On December 3, 2020, Petitioner underwent rotator cuff revision repair by Dr. Chhadia with superior capsule reconstruction of rotator cuff repair with acellular dermal allograft and extensive debridement. The post

operative diagnosis was: Right shoulder rotator cuff tear, supraspinatus and infraspinatus, recurring and right shoulder adhesions and capsulitis and bursitis. (PX 12, 79). Thereafter physical therapy was ordered. Petitioner again complained of pain with physical therapy on February 5, 2021, and it was place on hold until March 10, 2021. As of April 7, 2021, Petitioner reported some range of motion improvement with physical therapy, but her right shoulder pain was constant, despite medication. (PX 12, 17-19).

At the May 5, 2021 follow up visit, Petitioner complained of shoulder swelling, pain radiating down to the right hand 6/10 and numbness and tingling in the right shoulder. She had continued on Meloxicam and Cyclobenzaprine medications, and was recommended OTC NSAIDs . Another MRI/ CT was ordered with physical therapy put on hold. (PX 12, 13-15).

Petitioner returned to Dr. Chhadia on May 28, 2021 following May 24, 2021 MRI, which was interpreted to suggest a subtle graft placement failure. Physical therapy was to resume. (PX 12, 7-10).

Dr. Chhadia excused Petitioner from work after the July 16, 2020 surgery, until he released her from his care in June of 2021.

Dr. Chhadia authorized Petitioner to return to work with 5 pounds lifting, no overhead lifting, and no pushing or pulling permanent restrictions on June 2, 2021. (PX 12, 6). Petitioner was last seen on by Dr. Chaddia on June 25, 2021, reporting worsening pain with movement. Her pain at rest was 4/10, and 6/10 with movement. She was at MMI. (PX 12, 2-5).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law that follow.

Section 1(d) of the Act provides that, in order to obtain compensation under the Act, the employee bears the burden of showing, by a preponderance of the evidence, that he or she has sustained accidental injuries arising out of and in the course of the employment. 820 ILCS 305/1(d).

To obtain compensation under the Act, Petitioner has the burden of proving, by a preponderance of the evidence, all of the elements of her claim (O'Dette v. Industrial Commission, 79 Ill. 2d 249, 253 (1980)), including that there is some causal relationship between her employment and her injury. Caterpillar Tractor Co. v. Industrial Commission, 129 Ill. 2d 52, 63 (1989).

Decisions of an arbitrator shall be based exclusively on evidence in the record of proceeding and material that has been officially noticed. 820 ILCS 305/1.1(e).

In making his findings regarding Conclusions of Law, the Arbitrator notes several inconsistencies in Petitioner's case. Petitioner's testimony is found to be lacking but is not found to be entirely incredible. The Arbitrator also notes that some patients do not have a good result from surgery, and that is what happened to Petitioner.

First, Petitioner gave many deflective answers of "I don't remember, I don't recall", which even an unsophisticated witness would be expected to answer. For example, she did not recall receiving \$10,000.00 in STD benefits. The transcript, and the Arbitrator's notes show that Petitioner answered a question with a "yes" (T. 72) and a "yeah" (T. 90). Petitioner also answered a question about meeting a coworker in Mexico before the question was translated. (T. 100-101). Further, Respondent's witnesses confirmed that Petitioner

communicated with them in English. Also, Petitioner was able to work for Respondent for 19 years and she has lived in the United States for almost 40 years. She has some English skills.

Examinations by treating physicians showed some symptom magnification and inconsistent physical exams. There were 2 invalid FCE studies. The video does show that Petitioner can drive for 15 minutes and can move her right arm (albeit below the shoulder plane), without noticeable difficulty.

Petitioner did not contact Respondent to come back after being released from care by Dr. Chhadia. Respondent did not contact Petitioner about returning to work either. The Arbitrator surmises that this is because Petitioner was receiving disability and had applied for SSDI. There was no evidence adduced by either Party regarding when Petitioner's employment with Respondent was terminated. Neither side has clean hands on this issue.

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

Petitioner's current condition of ill-being, to wit: persistent right shoulder pain, status post superior capsular reconstruction, (status post 3 shoulder surgeries, with permanent restrictions of 5 pounds lifting, no overhead lifting, and no pushing or pulling, per Drs. Verma and Chhadia) is causally related to the injury.

This finding is based upon the testimony of Petitioner, the medical records and the testimony of Drs. Verma and Chhadia.

Respondent disputes causation on the theory that the surgeries performed by Dr. Chhadia were unreasonable and unnecessary and break the chain of causation. This is based on the testimony of Dr. Verma.

The Arbitrator notes that Dr. Verma and Dr. Chhadia are board certified, fellowship trained orthopedic surgeons and he respects the opinion of Dr. Verma and also respects Dr. Chhadia's offer of surgery to Petitioner to try to relieve the effects of her work injury.

Given the end result, perhaps Petitioner should not have undergone the # 2 surgery that Dr. Chhadia offered. It is noted that Dr. Chhadia and Dr. Verma testified that the third surgery was necessary to correct the results of the second surgery.

Here, Petitioner had continued complaints after Dr. Alpert's surgery, which Dr. Verma endorsed causation to the April 25, 2018 work accident. Unfortunately, Petitioner failed two FCE studies. Thereafter, Dr. Izquierdo and Dr. Alpert released her from care, to return to work at full duty.

Petitioner then sought care from Dr. Chhadia, who noted a tear during his first surgery (disputed by a radiologist, Dr. Alpert and Dr. Verma), along with adhesions and a retained suture. Thus there was arguably pathology that perhaps merited the surgery. Petitioner was in pain and Dr. Chaddia is a surgeon.

It has long been held that "a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." Int'l Harvester v. Indus. Comm'n, 93 Ill. 2d 59, 63-64 (1982). "When the claimant's version of the accident is uncontradicted and his testimony is unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. *Id.* at 64. It is also well established that an accident need not be the sole or primary cause-as long as employment is a cause-of a claimant's condition. Sisbro v Industrial Commission, 207 Ill. 2d 193, 205 (2003).

While Petitioner did not explicitly deny prior right shoulder medical treatment (she did not recall), there was no evidence of same. Further a reasonable inference is that Petitioner was able to do her job prior to the work injury of April 25, 2018. Also, Dr. Verma causally related the first right shoulder surgery to the work injury.

The Workers' Compensation Act is a remedial Act, created to protect the health and survival of workers injured in their job. Peoria City Bellwood v. Industrial Commission, 115 Ill. 2d 524, 529 (1987).

The question is: whether the arguably sub-optimal care rendered by Dr. Chhadia breaks the chain of causation, extinguishing Respondent's liability for associated PPD, TTD and medical expenses? The Arbitrator finds that it does not. The first surgery performed by Dr. Chhadia was an attempt to help cure Petitioner of the effects of her injury. The second surgery that Dr. Chhadia performed was to remedy the effects of his first surgery.

This clearly not a situation where a truly independent intervening accident or injury occurs. There was no evidence of an event, such as a car accident or a fall from a significant height occurred, causing more injury to Petitioner's shoulder.

It is also noted that Dr. Chhadia did not examine Petitioner prior to Dr. Chhadia's surgeries. Of course, this was in part due to Petitioner not attending the January 20, 2020 Section 12 exam. However, Respondent did not reschedule the exam during the seven months before the July 16, 2020 surgery.

This is a case where a well-credentialed and respected orthopedic surgeon opines that the surgery offered to Petitioner by a likewise well-credentialed orthopedic surgeon was unreasonable and not necessary and Petitioner chose to proceed with the surgery, resulting in a suboptimal result.

Commission caselaw (Maria Lopez Martinez v. Swissport Cargo, 22 IWCC 0316, 19 WC 022078 and Jose Mejia v. Advanced Disposal, 22 IWCC 0409, 17 WC 033518) and the holding of the Appellate Court in Lewis v. Ill. Workers' Comp. Comm'n, 2021 IL App. (5th) 200302WC-U (cited for its persuasiveness) establishes that suboptimal care does not break the chain of causation. Here, the treatment rendered by Dr. Chhadia was related to the work accident of April 25, 2018. The treatment was related to Petitioner's injured right shoulder. The # 2 and # 3 surgeries, albeit questionable, were directly related to her shoulder symptoms. Absent her complaints, she would not have seen Dr. Chhadia and the surgeries would not have been done.

Causation has been established.

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:

Petitioner claimed three medical bills, per the Request for Hearing Form, Fox Valley: \$25,830.70, Midwest Bone and Joint: \$25,743.21 and Suburban Ortho: \$30,264.04. (ArbX 1). These are the only bills that can be awarded, per Walker v. Indus. Comm'n, 345 Ill. App. 3d 1084 (2004).

The Parties agreed that Petitioner is withdrawing the bills from Midwest Bone and Joint, since it is a duplicate of the Fox Valley Orthopedics bill and Respondent agrees to pay the Fee Schedule amount of the Fox Valley Orthopedics bill.

Based upon the Arbitrator's finding above on the issue of causation and regarding whether Petitioner exceeded her two choices of physicians, the bill from Suburban Orthopedics is awarded, in the amount of \$30,264.04, (PX 19), pursuant to the Medical Fee Schedule and in accordance with Sections 8(a) and 8.2 of the Act. Respondent is entitled to a Section 8(j) credit for the awarded bill, as is set forth below.

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

Petitioner claimed entitlement to TTD from 11/8/2018 to the time of trial. Obviously, this was wrong as Petitioner did return to work after Dr. Alpert's surgery, per her testimony and the agreement of the Parties regarding lost time.

Based on the stipulation of the Parties and the Arbitrator's finding on the issue of causation, Respondent shall pay Petitioner TTD benefits of \$470.00/week for 56-2/7 weeks, commencing 11/8/2018 through 12/12/2018 and continuing 4/10/2019 through 5/3/2019 and 7/16/2020 through June 25, 2021.

Petitioner was declared to be at MMI by Dr. Chhadia on June 25, 2021 and did not submit any persuasive evidence that she was entitled to lost time benefits thereafter. Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Commission, 236 Ill. 2d 132 (2010).

WITH RESPECT TO ISSUE (L), WHAT IS THE NATURE AND EXTENT OF THE INJURIES?, THE ARBITRATOR FINDS:

At trial, Petitioner claimed she is permanently and totally disabled from work. Given her failure to show that she contacted Respondent regarding return to work after being released by Dr. Chhadia and the dearth of evidence regarding any job search efforts, the Arbitrator finds that there has been a failure of proof that Petitioner is permanently and totally disabled from work as a result of the April 25, 2018 work accident.

Petitioner relies upon the testimony of Edward Pagella, the medical records reflecting significant restrictions regarding the use of Petitioner's right (dominant) arm, Petitioner's advanced age and limited work experience, in claiming a PTD award.

An employee is permanently and totally disabled when he is unable to make some contribution to the work force sufficient to justify the payment of wages. Federal Marine Terminals, Inc. v. Illinois Workers' Comp. Comm., No. 1-06-1738WC (2007). An employee need not be reduced to total physical incapacity. Instead, he need only show that he is incapable of performing services except those for which there is no reasonable stable market. Age, training, education and experience are all relevant to determine employment potential. Additionally, medical opinions and the results of a diligent but unsuccessful job search are relevant to the determination. Once an employee initially established that he is so handicapped that he will not be employed regularly in any well-known branch of the labor market, then the burden shifts to the employer to show that some kind of suitable work is regularly and continuously available to him. Id.

In this case, after considering the testimony of the vocational experts, the medical records and opinions of Drs. Verma and Chhiadia and the surveillance video, the Arbitrator believes that Petitioner should have attempted to find some suitable employment after being released by Dr. Chhiadia. Instead, she went forward on disability (having made an application for SSDI benefits before being released by Dr. Chhiadia).

The Arbitrator finds the opinions of Julie Bose as to the availability of some position for Petitioner to work at and meaningfully contribute to society to be persuasive. The video evidence shows that Petitioner is capable of using her right arm for some tasks. She is not permanently disabled from a medical standpoint or from a vocational standpoint, and she failed to show an unsuccessful job search.

The Arbitrator is not persuaded by Edward Pagella's opinions in this case.

Petitioner was not able to return to her prior job, per the testimony of Julie Bose.

It is noted that in the absence of an election to pursue a PPD claim under §8(d)2 of the Act, if Petitioner proves that she has suffered an injury which incapacitates her from performing her usual and customary occupation and has suffered an impairment of earning capacity, the Commission shall award a §8(d)1 wage loss. Gallianetti v. Industrial Comm'n, 315 Ill. App. 3d 721, 728-729 (2000). There was not sufficient evidence adduced for the Arbitrator to make a Section 8(d)1 award. There was no proof of what Petitioner's current earnings would be in the full performance of her work duties in the job that she had at the time of the injury and Bose testified that the median wage for suitable employment for Petitioner would be \$16.77 per hour. The stipulated AWW of \$705.00 yields an hourly rate of \$17.63 per hour.

The work injury did result in a loss of occupation, per the proofs. The Arbitrator will, therefore, make a PPD award pursuant to Section 8(d)2 of the Act.

Pursuant to §8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors;

- (i) the reported level of impairment pursuant to subsection (a);
- (ii) the occupation of the injured employee;
- (iii) the age of the employee at the time of the injury;
- (iv) the employee's future earning capacity; and
- (v) evidence of disability corroborated by the treating medical records.

No single enumerated factor shall be the sole determinant of disability. IN determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

The Arbitrator finds that all of the factors are relevant in determining PPD.

(i) Level of Impairment

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither Party submitted a PPI report. This factor is given no weight in determining PPD.

(ii) Occupation

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 by Respondent as a machine operator, assembler and welder at the time of the work accident and she did not return to work for Respondent in that capacity. Ms. Bose testified that Petitioner was not able to return to her pre-accident employment. The Arbitrator gives great weight to this factor in determining PPD.

(iii) Age

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 52 years old at the time of the accident. Petitioner is older middle aged and will continue to experience the effects of her injury for the remainder of her life, having chosen to receive SSDI benefits. The Arbitrator gives great weight to this factor in determining PPD.

(iv) Earning Capacity

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, the Arbitrator notes that Petitioner was not released to work at her regular occupation, but Ms. Bose testified persuasively that there was some suitable employment available for Petitioner. There does not appear to be a loss of occupation, but not much loss of earning capacity as a result of the subject work injury. The Arbitrator gives appropriate weight to this factor in determining PPD.

(v) Disability Corroborated by Treating Medical Records

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that as a result of the work accident on April 25 2018, Petitioner has undergone three surgeries and has significant right upper extremity activity restrictions and subjective complaints of pain. Both Dr. Chhiadia and Dr. Verma endorse the significant restrictions (post the last two surgeries). The Arbitrator gives great weight to this factor in determining PPD.

Based on the consideration of the above five factors, and the Record taken as a whole, the Arbitrator finds that as a result of the injuries sustained in this case, Petitioner suffered the 40% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

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

The Parties stipulated that Respondent was entitled to a credit of \$4,918.70 for TTD benefits paid. This shall be applied to the TTD award.

The Parties stipulated that Respondent was entitled to a Section 8(j) credit for STD benefits paid of \$10, 525.00, for the time period of 7/27/2020 to 2/1/2021. This shall be applied to the TTD award.

Based on the testimony of Bozena Simeon, Respondent is entitled to a Section 8(j) credit for Aetna payments for the Suburban Orthopedics bill awarded above.

All Section 8(j) credits are, of course, subject to Respondent keeping Petitioner safe and harmless from any and all claims or liabilities that may be made against her by reason of having received such payments, only to the extent of such credit. 820 ILCS 305/8(j).

WITH RESPECT TO ISSUE (O), OTHER: HAS PETITIONER EXCEEDED HER TWO CHOICES OF PHYSICIANS? AND OBSTRUCTION OF SECTION 12 EXAMINATION, THE ARBITRATOR FINDS:

Petitioner did not exceed her two choices of physicians.

The evidence establishes that PIC, Dr. Komnick and Dr. Alpert are Respondent's choices. Dr. Izquierdo and Dr. Chhadia are Petitioner's choices.

Regarding the "Section 12 Obstruction" claim, Respondent is not entitled to reimbursement for the no-show fee for Dr. Verma, or the interpreter. There is no provision in Section 12 of the Act or the Rules for such an award. Arguably, TTD could be suspended, but Respondent's TTD obligation did not arise until July 16, 2020, some 6 months after the missed exam. There was no showing as to why Respondent failed to reschedule the Dr. Verma exam. Therefore, nothing is awarded to Respondent for any claimed obstruction.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC033640
Case Name	Brandon Brown v. Prairie Farms Dairy, Inc.
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0031
Number of Pages of Decision	23
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Joshua Humbrecht
Respondent Attorney	Matthew Terry

DATE FILED: 2/4/2026

/s/ Carolyn Doherty, 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

BRANDON BROWN,
 Petitioner,

vs.

NO: 22 WC 033640

PRAIRIE FARMS DAIRY, INC.,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, notice, medical expenses, statute of limitations, and "other: whether Petitioner's claim is barred by his prior settlement contract from 18WC30997," 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 16, 2025 is hereby affirmed and adopted.

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

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$2,800.00. 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.

February 4, 2026

O: 01/28/26

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	22WC033640
Case Name	Brandon Brown v. Prairie Farms Dairy, Inc.
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	20
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Joshua Humbrecht
Respondent Attorney	Matthew Terry

DATE FILED: 4/16/2025

*/s/ Jeanne AuBuchon, Arbitrator*Signature**INTEREST RATE WEEK OF APRIL 15 2025 4.06%**

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)

Brandon L. Brown
 Employee/Petitioner
 v.
Prairie Farms Dairy, Inc.
 Employer/Respondent

Case # 22 WC 033640
 Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Jeanne L. AuBuchon, Arbitrator of the Commission, in the city of Mt. Vernon, on February 20, 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 Respondent alleges the claim is barred by LSSC 18WC030977; and Statute of Limitations

FINDINGS

On July 8, 2022, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned \$52,284.96; the average weekly wage was \$1,005.48.

On the date of accident, Petitioner was 32 years of age, married with 3 dependent children.

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, \$N/A for maintenance, and \$N/A for other benefits, for a total credit of \$N/A.

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

ORDER

Respondent shall pay for medical expenses as listed in Petitioner's Exhibit 7 pursuant to Section 8(a) of the Act. Respondent is entitled to a credit for all benefits paid under 8(j) and shall hold petitioner harmless for the same.

Respondent shall authorize and pay for prospective medical care – specifically bilateral carpal tunnel releases and follow-up care as recommended by Dr. Patrick Stewart.

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

APRIL 16 2025

PROCEDURAL HISTORY

This matter proceeded to trial on February 20, 2025, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of his employment; 2) date of accident; 3) notice; 4) the causal connection between the accident and the Petitioner's bilateral carpal tunnel condition; 5) payment of medical expenses; 6) whether the claim is barred by a prior settlement or statute of limitations; and 7) entitlement to prospective medical care.

FINDINGS OF FACT

The Petitioner has been employed with the Respondent for 11 years. (T. 14) He worked "pull off/unload," from January 2015 through March 2016, "swing man" from March to November 2016, "relief 5" from January 2019 through September 2021, "B line picker" from September 2021 through December 2023 and "unload" and "floater" from December 2023 to the present. (T. 17, 25-26, 35-36, 42)

The Petitioner testified that the job of "pull off" entailed pulling half gallons and gallons in crates stacked six high from a conveyor chain and putting them where they belong for distribution. (T. 17-18) He said he used a metal hook to drag the crates that weigh 200-250 pounds across a soapy tile floor. (T. 19-20) He said the job of "unload" entailed unloading product from incoming semi-trailers and putting it in the refrigeration system, using a pallet jack and hook. (T. 21-22) He said he continuously used his hands and arms – grabbing the hook and dragging and manually lifting crates. (T. 23) He said he also manually put product into crates. (T. 24)

As a "swing man," the Petitioner worked every job in the facility, filling in for the main operators on vacation. (T. 25) In the "relief 5" position, the Petitioner relieved other workers for

days off on the spotter truck in case dock, including an “unload” day each week. (T. 26, 32) Working the spotter truck entailed constantly hooking and unhooking trailers. (T. 27) The Petitioner said that on the case dock, he unloaded empty milk crates from trailers and put them on a chain to feed the production. (T. 29) He also manually unloaded empty pallets and “slop” – product that comes back from stores and is thrown away. (T. 30) He said he also worked as a “floater” covered jobs in the cooler for employees who called in. (T. 32-33) In the cooler, he would unload, drag, stack and down stack. (T. 33) In his job as a “B line picker,” he manually lifted, stacked, down stacked and dragged product in the cooler using a hook to the chain to be loaded onto trucks. (T. 36-39)

The Petitioner acknowledged that he previously had a workers’ compensation claim with a date of injury of August 28, 2017, from which he underwent bilateral cubital tunnel surgeries. (T. 15-16) On that date, the Petitioner underwent a Section 12 examination by Dr. David Brown, an orthopedic surgeon at The Orthopedic Center of St. Louis. (PX3, PX9) Dr. Brown found that the Petitioner had some symptoms and findings on examination consistent with bilateral cubital tunnel syndrome and recommended electromyography and nerve conduction studies (EMG/NCS) and conservative treatment. (Id.) The studies were performed on July 18, 2018, by Dr. Sajjan Nemani, a neurologist at Advanced Sleep & Neurodiagnostic Services, and were within normal limits. (PX9) After reviewing the studies, Dr. Brown issued an addendum report on July 23, 2018, saying he had no additional recommendations. (Id.)

The Petitioner testified that he was still having symptoms radiating down from his elbows to his pinky and ring fingers. (T. 45-46) He sought a second opinion from Dr. Patrick Stewart, an orthopedic hand and upper extremity surgeon at Southern Illinois Hand Center. (PX3, RX5) As of his first visit on October 16, 2018, the Petitioner was experiencing numbness and tingling only

in his ring and small fingers. (PX3) Cubital tunnel testing during a physical examination was positive, and carpal tunnel testing was negative. (Id.) The Petitioner continued to treat conservatively with Dr. Stewart. (Id.)

Dr. Brown performed another Section 12 examination on December 11, 2018, and found the Petitioner continued to have symptoms and findings on examination suggestive of an ulnar neuropathy at both elbows. (PX9) He recommended repeat EMG/NCS, cubital tunnel braces and anti-inflammatory medication. (Id.)

EMG/NCS testing on January 3, 2019, was positive for mild ulnar and median nerve neuropathies. (RX4) On January 23, 2019, the Petitioner reported to Dr. Stewart that in the past week to week and a half, he started to develop some numbness and tingling in his thumb and index finger of both hands. (PX3, RX5) Dr. Stewart noted positive carpal tunnel findings in addition to cubital tunnel findings, prescribed an anti-inflammatory and continued splinting. (Id.) Dr. Stewart wanted to see if the Petitioner could get resolution of his symptoms, and, if not, he would recommend surgery. (Id.) The Petitioner testified that his thumbs, index and middle fingers improved but the symptoms in his pinky and ring fingers increased. (T. 49-50) Dr. Stewart noted this as well in his treatment notes from March 20, 2019, and recommended elbow surgery. (PX3)

On February 21, 2019, Dr. Brown reviewed the EMG/NCS and recommended cubital tunnel releases as well. (PX9) Dr. Stewart performed the elbow surgeries on April 15, 2019, and May 22, 2019. (PX3, RX1) The Petitioner testified that when he went back to work full duty after having undergone the cubital tunnel surgeries and had no recurrence of numbness and tingling in any of his fingers. (T. 50-52) This was reflected in Dr. Stewart's post-operative treatment notes. (PX3) On June 5, 2019, Dr. Stewart allowed the Petitioner to return to work full duty on June 17, 2019. (Id.)

The Settlement Contract approved on November 18, 2019, listed an accident date of August 28, 2017, and alleged injuries to the bilateral arms, elbows, hands and wrists and other body parts. (RX1) It awarded PPD of 15 percent of the left arm/elbow and 12.5 percent of the right arm/elbow. (Id.) The settlement terms stated this was a final settlement of any and all claims “for all accidental injuries allegedly incurred herein, including all claims to date and including any and all results or developments, aggravations, fatal or non-fatal allegedly resulting from such accidental injuries.” (Id.) The contract also stated that the settlement was based on the Petitioner’s “present condition.” (Id.) The Petitioner said that at the time of the settlement, he was not having any problem with numbness and tingling in any fingers. (T. 53-54)

The Petitioner testified that he was able to do his job from 2019 through 2020 and into 2021 without recurrence of numbness, tingling or any problems. (T. 54) He said that in July 2021, he started to have numbness and tingling in his thumb, index and middle fingers, which he reported to his supervisor on August 10, 2021. (T. 54-55)

On August 12, 2021, the Petitioner sought treatment from Dr. Brian Atwood, a family medicine physician at Atwood Medical, who referred him to a hand surgeon. (PX2) On October 21, 2021, the Petitioner saw Dr. Lisa Sasso, an orthopedic hand surgeon at Sarah Bush Lincoln Southern Illinois Hand Center, and reported numbness and tingling in the radial three digits of both hands for a few months. (Id.) He said increasing activities make his symptoms worse, especially at work. (Id.) After an examination, Dr. Sasso diagnosed bilateral carpal tunnel syndrome and recommended bracing. (Id.) The Petitioner was given custom volar wrist neutral orthoses at Carle Richland and Occupational Therapy on October 21, 2021. (PX4) He testified that these helped. (T. 56-57)

The Petitioner saw Dr. Stewart on March 9, 2022, and complained of worsening symptoms of numbness and tingling in the radial digits. (PX2) He described his current job duties as a picker. (Id.) Dr. Stewart examined the Petitioner, diagnosed bilateral carpal tunnel syndrome and ordered EMG/NCS. (Id.) He believed the Petitioner developed symptoms in reference to the carpal tunnel findings that were already evident on the EMG/NCS from January 2019. (Id.) He noted that the Petitioner had a repetitive, forceful heavy-lifting job that involved cold exposure, which has been shown to have a dramatic increase in the likelihood of development of carpal tunnel. (Id.) He said the Petitioner's injuries were related to his activities as a picker for the Respondent. (Id.)

On May 18, 2022, the Petitioner underwent EMG/NCS performed by Dr. Nemani. (Id.) Dr. Nemani reported that the studies were within normal limits, adding that a negative examination would not rule out the possibility of an entrapment neuropathy. (Id.) The Petitioner also saw Dr. Stewart that day. (Id.) He reviewed the studies and performed an examination with maneuvers that were positive for carpal tunnel syndrome. (Id.) He diagnosed bilateral carpal tunnel syndrome and performed a steroid injection to the left carpal tunnel. (Id.) On June 10, 2022, he performed another steroid injection to the right carpal tunnel. (Id.)

The Petitioner testified that the steroid injections relieved his symptoms for about one and a half to two weeks. (T. 59-60) He reported this to Dr. Stewart on June 10, 2022, and July 8, 2022. (PX2) Based on this reaction to the injections, Dr. Stewart recommended carpal tunnel releases. (Id.)

In December 2022, the Petitioner was involved in a car accident in which two bones in his left wrist were fractured, for which he underwent surgery and was off work. (T. 60-61) Records from Carle Richland Memorial Hospital show that he was seen in the emergency department on December 9, 2022, following a head-on collision with another vehicle. (RX10) He complained

of left wrist and left foot pain. (Id.) X-rays and a CT scan showed a commuted intra-articular fracture deformity of the distal radius and significant dorsal tilt of the distal segment and articular surface. (Id.) As doctors could not perform surgery that day, the Petitioner was transferred to Deaconess Midtown Campus Hospital, where he underwent an open reduction and internal fixation of the left distal radius. (RX10, RX11)

The Petitioner said that when he went back to work in February 2023, he was not having problems with numbness in his first three fingers but did after working again. (T. 62-63) The Petitioner reported this to Dr. Stewart on May 5, 2023, at which time, Dr. Stewart again recommended surgery. (PX2) At a follow-up visit on June 16, 2023, the Petitioner reported improvement in nocturnal awakenings when he wore his splints but that he had symptoms with prolonged activities during the day. (Id.) On July 25, 2023, he reported persistent numbness and tingling but that it only awakened him occasionally. (Id.)

On August 10, 2023, the Petitioner underwent a Section 12 examination by Dr. William Christopher Kostman, an orthopedic surgeon at Performance Orthopedics. (RX8, Deposition Exhibit 2) The Petitioner described his work activities consistently with his testimony and reports to other medical providers. (Id.) He described his prior treatment and having symptoms at work, while throwing a ball with his son and with mowing his lawn on a zero-turn mower. (Id.) Dr. Kostman reported that the Petitioner was awakened at night with symptoms. (Id.) When asked why he attributed his symptoms to his work activity, the Petitioner said it was because of the amount of repetitive activities at work. (Id.) When asked when his symptoms occurred, he said he had symptoms after working for an hour or two in a shift but got his most intense symptoms at night. (Id.)

Dr. Kostman He took X-rays and reviewed job descriptions for various positions with the Respondent, workers' compensation documents from the prior and current claims and medical records from 2018 through 2023. (Id.) Dr. Kostman stated that in light of the Petitioner's symptoms with severity at night, his subjective complaints and his response to the injections, he believed the Petitioner had a mild case of bilateral carpal tunnel syndrome. (Id.) Dr. Kostman did not believe the Petitioner's work activities were the cause of or permanently aggravated carpal tunnel syndrome, citing primary symptoms at night, symptoms with other outside activities, the EMG/NCS findings and the Petitioner having a body mass index (BMI) of 31 for obesity, a family history of diabetes, elevated blood sugars, A1C in the upper range of normal and a distal radial fracture. (Id.) Dr. Kostman also stated that after his cubital tunnel surgery, the Petitioner returned to work and presented for numbness in his hands six to 12 months later. (Id.)

Although Dr. Kostman stated that the Petitioner may elect to have surgery, he believed the Petitioner's symptoms were intermittent and were not evidenced by EMG/NCS with no sign of muscular wasting or weakness. (Id.) He believed the Petitioner could treat his symptoms conservatively. (Id.)

The Petitioner testified that the statement that he was having the most intense symptoms at night at home was not accurate. (T. 63-64) He said his symptoms were the worst at work, but there were times he would wake up with numbness and tingling in his hands. (T. 64) He said Dr. Kostman's report of him being 5'5" tall also was inaccurate. (Id.) He said he was 5'9" tall. (Id.)

The Petitioner continued to follow up with Dr. Stewart with no change in his condition. (PX2) At a visit on September 27, 2023, Dr. Stewart remarked on Dr. Kostman's report, stating that Dr. Kostman "completely negates" the Petitioner's activities of repetitive forceful grasping, which has been shown without contention to place patients at an increased risk for developing

carpal tunnel. (Id.) He also noted that there was no indication whether Dr. Kostman was applying Missouri or Illinois rules of workers' compensation, which are dramatically different. (Id.)

Dr. Stewart testified consistently with his records at a deposition on November 7, 2023. (PX1) He explained that patients will feel carpal tunnel in the radial digits – thumb, index and middle fingers – as opposed to the ulnar digits, being the ring and small fingers. (Id.) He characterized the Petitioner's carpal tunnel condition in 2019 as a transient problem. (Id.) He said the Petitioner had "some irritation" of the median nerve of the wrist and a "sensory finding" of carpal tunnel syndrome on the EMG/NCS but not a "motor finding." (Id.) He acknowledged that on January 23, 2019, he discussed the possibility of carpal tunnel releases in the future, but after February 20, 2019, he stopped diagnosing bilateral carpal tunnel syndrome because the Petitioner's symptoms and complaints resolved. (Id.)

Dr. Stewart stated that in the two years from the cubital tunnel surgery until he began experiencing carpal tunnel symptoms, the Petitioner's job changed from doing different things every day to doing the same thing with daily cold exposure. (Id.) He explained that with cold exposure, there is a decreased blood flow into the extremities, leading to further troubles with ischemia scarring in a nerve that is already at risk because of compression. (Id.) He pointed to forestry workers using vibratory chainsaws in cold weather and meatpackers working in coolers cutting, grabbing and lifting meat who develop nerve compression. (Id.) He characterized the Petitioner's work activities as forceful and repetitive and explained how such activities physiologically cause the development of carpal tunnel syndrome. (Id.)

Regarding the motor vehicle accident, Dr. Stewart said it did not contribute to the Petitioner's condition. (Id.) He pointed out that after the accident, the Petitioner's symptoms resolved but recurred and worsened when he went back to work. (Id.) He said that if the wrist

fracture had an important impact on the Petitioner's carpal tunnel syndrome, he would expect the Petitioner's symptoms to have been worse before he went back to work, but, instead, they were better. (Id.) He agreed that the improvement the Petitioner experienced when away from work after the motor vehicle accident further supported that the Petitioner's work activities were a contributing cause to his bilateral carpal tunnel syndrome. (Id.)

Dr. Stewart did not believe the Petitioner had any other risk factors for carpal tunnel syndrome. (Id.) He said Dr. Kostman misstated the Petitioner's BMI, which was actually 28 instead of 31 – not in the obese category. (Id.)

Dr. Kostman testified consistently with his report at a deposition on January 17, 2024. (RX8) He said cold exposure is not recognized as an independent risk factor for development of carpal tunnel syndrome, adding that you can “certainly” have symptoms in a cold environment. (Id.) On cross-examination, he acknowledged that the Petitioner did heavy lifting, heavy pulling, grasping a metal hook to drag 200-plus-pound crates, grasping milk crates and working in the cooler. (Id.) He acknowledged studies correlating meat packers working in cold fridges and the onset of carpal tunnel syndrome but maintained that such is not an independent risk factor. (Id.) He did not believe the Petitioner's lifting and carrying activities were independent risk factors for carpal tunnel. (Id.) When queried further about grasping to lift and grasping the metal hook to pull crates, Dr. Kostman opined that these activities were not risk factors for developing carpal tunnel syndrome, stating that these activities were different from heavy repetitive grasping, such as making a hundred grasps to heavy, resistant machinery. (Id.) He said the Petitioner's symptoms occurring mostly at night supported his conclusion that the Petitioner's work was not a factor in the development of carpal tunnel syndrome. (Id.)

Regarding his statement that the Petitioner had a BMI of 31 in the obese category, Dr. Kostman acknowledged that figure came from Dr. Atwood's note that the Petitioner was 5 feet, 6.4 inches tall and weighed 197.8 pounds. (Id.) He said that if the Petitioner's height was corrected to 5 feet, 9 inches – as is reflected in the rest of his medical records – his BMI would be under 30, which is overweight but not obese. (Id.) Dr. Kostman also admitted that although he referenced high blood sugars in his report, the Petitioner did not have diabetes. (Id.) He admitted that the Petitioner's carpal tunnel symptoms started two years after his return to work from his cubital tunnel surgery, rather than the six to 12 months he stated in his report. (Id.)

As to the Petitioner's nocturnal symptoms, Dr. Kostman stated that in his experience, people with work-related symptoms typically have most of their symptoms at work, while people with idiopathic carpal tunnel typically have most of their symptoms at night. (Id.) But he agreed that from the Petitioner's description of having symptoms after working one to two hours, the work activities exacerbated his symptoms, adding that it was a temporary exacerbation. (Id.) He also admitted that he does not keep notes of claimant interviews in these evaluations. (Id.)

Dr. Kostman had no issues with the reasonableness and necessity of the treatment the Petitioner received. (Id.)

The Petitioner testified that at the time of arbitration, his carpal tunnel symptoms had gotten progressively worse since August 2021. (T. 64-65)

CONCLUSIONS OF LAW

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

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

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

The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Cassens Transp. Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 330, 633 N.E.2d 1344, 199 Ill. Dec. 353 (2nd Dist. 1994) An injury is considered "accidental" even though it develops gradually over a period of time as a result of repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Id.* Compensation may be allowed where a workman's existing physical structure, whatever it may be, gives way under the stress of his usual labor. *Laclede Steel Co. v. Indus. Comm'n.*, 6 Ill.2d 296 at 300, 128 N.E.2d 718, 720 (Ill. 1955) The claimant's injury need not be the sole factor that aggravates a preexisting condition, so long as it is a factor that contributes to the disability. *Cassens Transp. Co.*, 262 Ill. App. 3d at 331.

Dr. Kostman opined that the Petitioner's work did not play a part in his development of carpal tunnel syndrome – that the origin of his condition was idiopathic. The Arbitrator notes several flaws in the bases of Dr. Kostman's opinions. Most notable is his reliance on the Petitioner's statement that his symptoms were worse at night. In reviewing the medical records, the Arbitrator notes that the Petitioner never told this to any other medical providers and denied making this statement to Dr. Kostman. The Arbitrator finds the Petitioner to be credible. His testimony and reports to the medical providers were consistent. In fact, on June 16, 2023, the Petitioner reported to Dr. Stewart that he had only occasional nocturnal awakenings, but he had symptoms with prolonged activities during the day. Considering that Dr. Kostman does not take

notes during his interviews, the Arbitrator finds it more likely that Dr. Kostman erred in transcribing his recollection to his report as it is not consistent with the Petitioner's reports to Dr. Stewart.

There also were inaccuracies and errors in the bases for Dr. Kostman's opinions in his report, such as the statement that after the cubital tunnel surgery, the Petitioner returned to work and presented for numbness in his hands six to 12 months later. The Petitioner returned to work on June 17, 2019. He testified that he started to have numbness and tingling in July 2021. He presented to Dr. Atwood for treatment on August 12, 2021 – more than two years after returning to work. Dr. Kostman also erred in calculating the Petitioner's BMI to find him obese and, thus, a potential cause of carpal tunnel syndrome.

Due to all the above, the Arbitrator finds Dr. Kostman's opinions to be unreliable and unpersuasive. Dr. Stewart's opinions are more persuasive. He pointed out the change in the Petitioner's job duties from 2018 to the present time that included exposure to cold while performing heavy gripping activities. He explained that cold exposure is a risk factor for developing carpal tunnel syndrome. Dr. Stewart said there were no other risk factors than his work activities. Also, unlike Dr. Kostman, Dr. Stewart believed the Petitioner's job activities were forceful and repetitive. These conclusions are borne out by the evidence.

Lastly, the Arbitrator finds that the motor vehicle accident in December 2022 did not break the causal connection between the Petitioner's work and his bilateral carpal tunnel syndrome. After the accident, the Petitioner's symptoms resolved but recurred and worsened when he went back to work. According to Dr. Stewart, if the wrist fracture had an important impact on the Petitioner's carpal tunnel syndrome, it would be expected the Petitioner's symptoms would have been worse before he went back to work, but, instead, they were better.

Therefore, the Arbitrator finds that the Petitioner has proved by a preponderance of the evidence that his bilateral carpal tunnel syndrome arose out of and in the course of his employment and that his current condition of ill-being is causally related to his work activities.

Issue (D): What was the date of accident?

The date of the injury (accident) in a repetitive-trauma compensation case is the date when the injury manifests itself – the date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. *Durand v. Indus. Comm'n*, 224 Ill. 2d 53, 67, 862 N.E.2d 918, 308 Ill. Dec. 715. (2006) Courts have typically set the manifestation date of an injury on either the date on which the employee requires medical treatment or the date on which the employee can no longer perform work activities. *Id.* at 72. Because repetitive-trauma injuries are progressive, the employee's medical treatment, as well as the severity of the injury and particularly how it affects the employee's performance, are relevant in determining objectively when a reasonable person would have plainly recognized the injury and its relation to work. *Id.* See also *Oscar Mayer & Co. v. Industrial Commission*, 176 Ill.App.3d 607, 531 N.E.2d 174, 126 Ill.Dec. 41 (3rd Dist. 1988).

In *Durand*, the claimant reported carpal tunnel syndrome symptoms as work-related three years before what was determined to be the manifestation date, which was the date of formal diagnosis. *Durand*, 224 Ill.2d at 73-74. In *Oscar Mayer*, the Court set the manifestation date on the date of surgery, or the date the employee could no longer work, despite the claimant's knowledge that his condition was work-related two years prior. *Oscar Mayer*, 176 Ill.App.3d at 608.

The Petitioner did have signs and symptoms of carpal tunnel syndrome in 2019 that Dr. Stewart described as transient. The Petitioner had "some irritation" of the median nerve of the

wrist and a “sensory finding” of carpal tunnel syndrome on the EMG/NCS but not a “motor finding.” The symptoms in the Petitioner’s radial digits resolved in a month or two. Although carpal tunnel surgery was discussed, it was not recommended and was not necessary at that time.

In setting a manifestation date, the Arbitrator considers the medical treatment, the severity of the injury and how it affected the Petitioner’s performance. Unlike in 2019, the Petitioner’s condition has not resolved with conservative treatment, and his symptoms are worse when he is working. After the Petitioner reported only short-term relief from the injections, Dr. Stewart recommended surgery on the left carpal tunnel on June 10, 2022, and on July 8, 2022, he recommended bilateral surgery.

In further support of a manifestation date in 2022, the Arbitrator notes an important difference in the Petitioner’s job from the time of his cubital tunnel problems from 2017 through 2019 until his most recent problems. In 2021, he began working as a picker primarily in the cooler with persistent cold exposure that Dr. Stewart said has been shown to have a dramatic increase in the development of carpal tunnel syndrome. While working in the cooler, the Petitioner’s condition worsened, and conservative treatment failed.

Therefore, the Arbitrator finds that July 8, 2022, is the date on which the Petitioner’s condition of bilateral carpal tunnel syndrome and its relation to his work manifested and his existing physical structure gave way under the stress of his usual labor.

Issue (O): Is the claim barred by the Settlement Contract in 18WC30997 or the statute of limitations?

To determine whether the settlement contract between Petitioner and Respondent in 18 WC 30997 bars 22 WC 33640 the Arbitrator must first determine whether the contract is ambiguous or clear, a question of law to be determined by the Arbitrator. *Countryman v. Industrial Comm'n*, 292

Ill. App. 3d 738, 740, 686 N.E.2d 61, 63 (2nd Dist. 1997). If the contract is clear, its interpretation must then also be determined as a question of law based only on the terms of the contract itself. *Id.* “A contract is ambiguous where the language employed is susceptible to more than one reasonable meaning or obscure in meaning through indefiniteness of expression.” *Id.*, 292 Ill. App. 3d 738, 741, 686 N.E.2d 61, 64.

The Arbitrator finds the contract to be ambiguous when it comes to bilateral carpal tunnel syndrome. Although injuries listed included hands, wrists and other body parts, injuries to any of these body parts were not stated anywhere else in the contract. The nature of the injury listed only 15 percent PPD of the left arm/elbow and 12.5 percent PPD of the right arm/elbow and nothing for the hands, wrists or other body parts. Therefore, the Arbitrator looks beyond the four corners of the contract to determine the intent of the parties as to whether carpal tunnel syndrome was a covered injury.

There are several reasons to find the parties did not intend to include carpal tunnel syndrome in this settlement. First is the fact that PPD awards were only made for the arms and elbows. Second, the accident date listed on the contract was a year and a half before the Petitioner exhibited any symptoms of carpal tunnel syndrome. This injury did not exist as of the date of accident. Third, the Petitioner’s carpal tunnel symptoms had resolved even before the Petitioner had cubital tunnel surgeries for which awards were made.

Lastly, an interpretation of the settlement contract to include hands, wrists and other body parts as listed under body parts affected would have an absurd result. For example, if the Petitioner had a degenerative spinal condition at the time of the date of injury that was not causing any symptoms at that time but later filed a claim for a workplace accident that caused an aggravation

of the degenerative spinal condition, he would be unable to pursue that claim under such an interpretation.

Regarding whether this claim is barred by the statute of limitations, based on the manifestation date of July 8, 2022, the Arbitrator finds the claim was timely filed on December 29, 2022.

Therefore, the Arbitrator finds this claim is not barred by the Settlement Contract in 18WC30997 nor the statute of limitations.

Issue (E): Was timely notice of the accident given to Respondent?

The Request for Hearing states that the Petitioner gave notice to his supervisor on August 10, 2021 – prior to seeking treatment and prior to the manifestation date. There was no evidence to rebut this. Therefore, the Arbitrator finds that the Petitioner provided timely notice.

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

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

No evidence was presented to show that the medical services the Petitioner has received to date were unreasonable or unnecessary. Therefore, the Arbitrator finds that the medical services were reasonable and necessary and orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 7. 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).

Aside from Dr. Kostman's opinion that carpal tunnel surgery was not causally related to the Petitioner's work, there was no evidence that the surgery recommended by Dr. Stewart is neither reasonable nor necessary. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, including surgery and follow-up care as recommended by Dr. Stewart, and the Respondent shall authorize and pay for such 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC024103
Case Name	Gina Roggasch v. Costco
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0032
Number of Pages of Decision	16
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Dean Caras
Respondent Attorney	Michelle LaFayette

DATE FILED: 2/4/2026

/s/ Kathryn Doerries, Commissioner
Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GINA ROGGASCH,
 Petitioner,

vs.

NO: 22 WC 024103

COSTCO WHOLESALE,
 Respondent.

DECISION AND OPINION ON REVIEW

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

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

Based upon the denial of compensation herein, no bond is set by the Commission. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 4, 2026

O: 01/27/26

KAD/ma

042

/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	22WC024103
Case Name	Gina Roggasch v. Costco
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Roma Dalal, Arbitrator

Petitioner Attorney	Dean Caras
Respondent Attorney	Michelle LaFayette

DATE FILED: 1/21/2025

/s/ Roma Dalal, Arbitrator

Signature

THE INTEREST RATE FOR THE WEEK OF JANUARY 14 2025 4.18%

STATE OF ILLINOIS)
)SS.
 COUNTY OF WILL)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Gina Roggasch

Employee/Petitioner

v.

Costco Wholesale

Employer/Respondent

Case # **22WC024103**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Roma Dalal**, Arbitrator of the Commission, in the city of **Joliet**, on **November 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 **6/21/2022**, 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 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 **\$51,116.00**; the average weekly wage was **\$983.00**.

On the date of accident, Petitioner was **47** years of age, *married* with **1** dependent children.

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

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

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

HAVING FOUND PETITIONER FAILED TO PROVE SHE SUSTAINED AN ACCIDENTAL INJURY ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT, THE APPLICATION FOR BENEFITS IS DENIED.

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

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



Signature of Arbitrator

January 21, 2025

STATE OF ILLINOIS)
) SS
COUNTY OF WILL)

ILLINOIS WORKERS’ COMPENSATION COMMISSION

Gina Roggasch,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 22 WC 024103
Costco Wholesale	)	
	)	
	)	
Respondent.	)	

FINDINGS OF FACT

This matter proceeded to hearing on November 12, 2024 in Joliet, Illinois before Arbitrator Roma Dalal. Issues in dispute include accident, causal connection, TTD benefits and nature and extent. (Arb. Ex. 1, T.4).

Gina Roggasch (hereinafter referred to as the “Petitioner”), testified she was employed for Costco Wholesale (hereinafter referred to as the “Respondent) as the night merch manager. (T.8-9). During her tenure with Respondent, she worked management positions in different departments. On April 11, 2019 Petitioner was the membership manager but also the overnight merch manager. She was to oversee employees to ensure they are doing their job and receiving the trucks when they come in. The store was closed. (T.13).

On April 11, 2019 Petitioner testified she walked inside a trailer and stepped across the dock plate and heard a loud pop in her left knee. (T.11). Petitioner reported it to her supervisor Zamira Rexpheh. (T.11). Petitioner was advised there might have been a slight tear to her ACL but there was nothing that could be done and take it easy. (T.12). Petitioner testified she worked from April of 2019 through June of 2022 with Costco. (T.12). Petitioner testified she advised her employer during that period of time that her left knee was occasionally bucking. (T.13).

In June of 2022, Petitioner worked as the Foods Manager. She testified her duties included overseeing about 75% of the floor, making sure items were stocked in the morning and walking the warehouse from the produce department to the pharmacy. (T.13).

On June 21, 2022, Petitioner testified she reported to work at 1:50 a.m. when the warehouse was closed. (T.14). She then walked inside with Zamira around 2:00 AM and walked into the food court to pull the rack of dough balls out of the cooler so they could start cooling. She was in the cooler for amount

20 minutes (T.14). After she exited the cooler, she testified she walked across the front of the warehouse to the office to grab tools to begin the day's project. (T.15) Petitioner testified she retrieved a ratchet set, which she estimated weighed 30 lbs. She claimed the ratchet set was necessary for the employees to perform the assigned task for the day. She testified as she was walking across the concrete floor carrying the ratchet set her left knee gave out. (T.16-17).

She testified she could not bend or straighten her knee, and it locked in 45-degrees. (T.18) She continued to the dairy cooler with the ratchet set where she testified, she spent the next 5 hours working, but the pain in her knee continued. (T.18).

Petitioner testified that she told Zamira that her left knee was injured right after it happened. She filled out an accident report around 7:20 AM that morning. (T.19). She then sought medical care at Concentra advising them she was walking carrying tools and her knee gave out. (T.20).

Petitioner testified she underwent an MRI and was eventually referred to Dr. Matlock. (T.21). Petitioner was prescribed surgery and underwent the same on June 30, 2022. (T.22). Petitioner then underwent physical therapy. (T.24-25).

Petitioner testified in November of 2022 she was still not fully recovered. At that point she had a cyclops lesion in her left knee which inhibited her to straighten her left leg. (T.26). Petitioner had to undergo a second surgery on November 23 to address the cyclops lesion. (T.26). Petitioner eventually was returned to work as of January 3, 2023. To date she has been working full duty. (T.27).

Petitioner testified that every night when she gets home from work her knee is swollen. (T.27). Her left knee has not kept her from performing her full duty work. (T.28).

Petitioner testified that she was carrying the 30-pound tool set on June 21, 2022. She was required to carry the tool set several times a week. (T.28). She further noted it was difficult to walk with the tool set. She also stated the tools belonged to Respondent. (T.29).

On Cross-Examination, Petitioner testified that after the incident in April of 2019 she saw the doctor once and underwent an MRI. After that MRI she had no further treatment until June of 2022. (T.30).

Petitioner testified she arrived at 1:50 AM. At that time, she sat in her vehicle in the parking lot until Zamira showed up. She did not actually go into the warehouse until 2:00 AM. (T.33). Then she took out the dough and went over to the office to get the toolbox. (T.33).

Petitioner noted that she filled out the report with Zamira about what happened. It was about five hours after the injury. Petitioner stated her knee gave out from the office across the front of the warehouse. (T.35). Petitioner read her statement, that she was walking out of the food court across the front end by MIMO and her knee gave out. (T.37). There was no mention that she was carrying anything. (T.38). Petitioner also noted the Concentra records did not document Petitioner carrying a toolbox. (T.41). Petitioner further noted she didn't write down anything about a toolbox within the intake form for her physician, Dr. Matlock. (T.43).

Petitioner agreed the first time she mentioned a toolbox was at trial when she testified. (T.44). She further testified to her best of her knowledge she did not trip over anything. She did not fall. She further indicated that although there were cracks on the floor, she didn't mention anything on the floor because she was not looking at the floor while walking. (T.45-46).

On Redirect, Petitioner stated she told Concentra about the toolbox. (T.48). When she filled her application out on September 9, 2022, she indicated it was while carrying a bolt and ratchet set to the dairy cooler. (T.48). Petitioner stated she did not review the Application before it was filed with the Commission. (T.50). She further confirmed she did not mention the tool set while filling out the accident report. (T.50). Petitioner also claimed she told Dr. Matlock and his nurse about the tool set. (T.52).

Respondent placed Petitioner's employee injury report into evidence. The injury details that she was walking out of the food court across the F.E. by Mimo and her knee just locked. It was signed and dated by Petitioner. (RX1).

Respondent also placed another certified copy of Dr. Matlock's medical records into evidence. (RX2). There is a worker's compensation form indicating Petitioner was walking from trailer to receiving on April 11, 2019 and injured left knee. (RX2, p.10). There is a second form indicating Petitioner was walking across the floor on June 21, 2022 and did not slip/fall, etc. and injured her left knee. (RX2, p.12).

The Arbitrator takes judicial notice that Application for Adjustment Claim was filed on September 14, 2022. The Application notes Petitioner slipped while carrying bolt and ratchet set to dairy cooler on June 21, 2022.

Medical Summary

The Arbitrator notes no pre-existing medical records were placed into evidence. Petitioner initially presented to Concentra Occupational Health on June 21, 2022. At 2:15 AM Petitioner noted while walking in Costco retail, her left knee suddenly locked. She leaned onto a counter for two to three minutes. She continued working using an electronic scooter, checking on employees then drove to the clinic. (PX1, p.22). Petitioner did have left knee pain many years ago when walking which resolved spontaneously. *Id.* at 26. The MRI revealed left ACL and medial meniscal tears. Petitioner was to follow up with care with her own orthopedic. *Id.* at 24. Petitioner underwent an X-Ray which revealed no significant acute pathologic process. *Id.* at 30.

On June 21, 2022 Petitioner underwent an MRI of the left knee revealing a complete tear of the anterior cruciate ligament, bucket-handle tear medial meniscus and grade 3-4 chondral loss in the patellofemoral compartment. (PX1, p.6; PX2).

On June 27, 2022 Petitioner presented to Dr. Robert Matlock at Fox Valley Orthopaedics for left knee pain. Petitioner stated she came in for an evaluation of her left knee. She initially injured this left knee at work in mid-April 2019. She ended up getting an MRI and did not have any treatment. Petitioner stated her knee felt quite unstable since that time and would give away on occasion. She was not able to do normal activities for fear it would give away. She was walking into work this past Tuesday when the knee just buckled and gave away. She has not been able to extend the knee since that time. Petitioner noted the initial injury was when she was on the loading dock checking the trailer, getting off and popped. Dr. Matlock

indicated that surgery was needed for the locked bucket-handle tear. He suspected the ACL had been torn for a couple of year now since the first injury based on the prior MRI findings as well as symptoms of instability. Petitioner was diagnosed with a bucket-handle tear of the medial meniscus of the left knee as the current injury, sprain of medial collateral ligament of the left knee and old complete tear of anterior cruciate ligament of the left knee. Petitioner was to return. (PX3).

On June 30, 2022 Petitioner underwent a left knee arthroscopy with ACL reconstruction. (PX4).

Petitioner followed up with Dr. Matlock on August 11, 2022. Petitioner was six weeks post left knee arthroscopy with ACL reconstruction with hamstring autograft as well as 12 stitch inside-out repair of a bucket-handle medial meniscus tear. Petitioner was placed in a JAS extension splint to use at home. Petitioner was to return in four weeks. (PX3).

A phone call on August 25, 2022 indicated Petitioner was walking without crutches. She was improved and in therapy. She was to follow up 10 weeks post-op. (PX3).

On November 11, 2022 Petitioner returned to Dr. Matlock. Petitioner had undergone a repeat MRI on November 8, 2022. Petitioner had been doing well until recently. She started to have increased pain and difficulty getting extension. Dr. Matlock opined Petitioner was developing a cyclops lesion in front of the ACL which would require a second left knee arthroscopy. (PX3).

On November 23, 2022, Dr. Matlock performed a left knee arthroscopy with cyclops lesion debridement and partial medial meniscectomy for trimming and smoothing of the free edge fraying and minimal tearing. (PX5).

On December 29, 2022, Petitioner followed up for her left knee. She was six months out from her ACL reconstruction with hamstring autograft and 12 stitch inside-out bucket-handle medial meniscus tear and is now just over 5 weeks out from her debridement of the cyclops lesion. Petitioner could start jogging and continue with therapy. She can also add in some swimming. Petitioner could even start to ride a horse but needed to mount with her right foot not left. Petitioner was to return to work with restrictions of minimal bending or stooping, no kneeling and no deep squatting and return in six weeks. (PX3). Petitioner followed up with Dr. Matlock on February 9, 2023. Petitioner was back to working full duty. She had good and bad days. She had no effusion and full flexion. Petitioner still needed to build up the quad muscle. Petitioner was to continue with therapy and return in three months. *Id.*

Petitioner was last seen on August 8, 2023 with Dr. Matlock for her left knee. Petitioner had been having pain the last couple of weeks and getting swelling in the calf and ankle. Petitioner was diagnosed with pes anserine bursitis of the left knee. Petitioner was placed on diclofenac and placed in physical therapy. She was to return in a month. (PX3).

Deposition of Dr. Matlock

On July 12, 2024 the Parties proceeded with the deposition of Dr. Matlock. (PX6). Dr. Matlock is an orthopedic surgeon who specializes in sports medicine. *Id.* at 5. He opined he saw Petitioner on June 27, 2022 noting Petitioner had a bucket handle tear of the medial meniscus and an ACL tear. *Id.* at 6. He stated Petitioner told him she was walking into work when her knee buckled and gave way. She also had

an initial injury when she was on the loading dock checking out a trailer and her knee popped. She had no issues with the knee prior to the first injury. *Id.* at 7. Dr. Matlock noted that he believed Petitioner had a significant ACL injury in April of 2019. *Id.* at 8.

Dr. Matlock opined Petitioner could have had a complete tear while walking, there was no way know. He opined Petitioner's bucket handle tear was probably caused because she had an unstable knee from a dysfunctional ACL. (PX6, p.9). He noted that walking, squatting, kneeling, bending, anything like that could cause it. Dr. Matlock opined the bucket handle tear was caused on that day when she was walking at work. He further noted that the ACL injury was aggravated or already torn, and Petitioner just had an unstable knee because of that prior ACL tear. *Id.* at 10. He opined an unstable knee would likely result in pathology to the medial meniscus as the medial meniscus is a secondary restraint for the ACL. *Id.* at 11.

Dr. Matlock testified to the need for Petitioner's surgery. (PX6, p.12). Dr. Matlock opined it was probably more related to the prior injury in April of 2019. He opined that the prior injury probably put her medial meniscus in jeopardy of tearing. *Id.* at 13.

Dr. Matlock testified Petitioner was recovering and then began developing a cyclops lesion, which was a big ball of scar in front of the knee which can prevent the knee from full extension. (PX6, p.17). He noted this cyclops lesion was a complication to the ACL surgery. *Id.* at 17. Dr. Matlock proceeded with a debridement surgery. *Id.* at 18. He last saw Petitioner in August of 2023. *Id.* at 24.

On Cross-Examination, Dr. Matlock confirmed Petitioner had an initial work injury in April of 2019 when she was getting off the trailer and her knee popped. (PX6, p.27). That was the mechanism that was consistent with the ACL diagnosis. Dr. Matlock noted he did not review any 2019 medical records. He did review Petitioner's 2019 MRI. *Id.* at 28. Based on the 2019 MRI Petitioner probably had an unstable knee. *Id.* at 29. When an ACL causes an unstable knee, instability, is giving way when they twist or turn. There is a high rate of a subsequent medial meniscus injury because the medial meniscus is a secondary restraint for the ACL. He further noted it's seeing a lot more pressure and a lot more likely to have an injury than someone with a stable knee. *Id.* at 30. He confirmed Petitioner stated between 2019 and June 21, 2022 Petitioner had feelings of knee instability. She also had symptoms where the knee would buckle. *Id.* at 31. Dr. Matlock noted these were all symptoms of instability. *Id.* at 32. Dr. Matlock further noted Petitioner indicated she was just walking. He did not document that she tripped, slipped, twisted her knee, bumped her knee. *Id.* at 32-33.

Dr. Matlock noted it was feasible that walking could cause a bucket handle tear but unlikely. He noted that bucket handle tears involve some sort of twisting motion, particularly already in an unstable knee. But just walking would not typically be the presenting cause of a bucket handle tear. Based on the history provided Petitioner was just walking at the time her knee locked up. (PX6, p.34). He opined again that the weakened condition of her knee from the ACL tear is what eventually led to the bucket handle tear. *Id.* at 35. Dr. Matlock opined he thought she had an ACL tear in the first MRI in 2019 and also in the second MRI in 2022. *Id.* at 36. He is presuming the incident in April of 2019 caused the ACL tear. The ACL tear caused the instability, giving way and buckling of Petitioner's knee. *Id.* at 36.

On re-direct, Dr. Matlock opined again that the bucket handle tear occurred while walking at work. (PX6, p.37).

CONCLUSIONS OF LAW

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

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

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

In this case the Arbitrator finds Petitioner's testimony does not comport with the medical evidence submitted into trial. The Arbitrator does not deem Petitioner's testimony regarding mechanism of injury, to include holding the ratchet set, credible.

With regard to Issue "C", whether the accident arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds as follows:

The Arbitrator incorporates by reference the above Findings of Fact and refers to them by reference herein. For accidental injuries to be compensable under the Workers' Compensation Act, a claimant must show such injuries arose out of and in the course of his or her employment. *Navistar Intern. Transp. Corp. v. Industrial Com'n*, 315 Ill.App.3d 1197 (2000).

A decision by the Commission cannot be based upon speculation or conjecture. *Deere and Company v Industrial Commission*, 47 Ill.2d 144, 265 N.E. 2d 129 (1970). A petitioner seeking an award before the Commission must prove by a preponderance of credible evidence each element of the claim. *Illinois Institute of Technology v. Industrial Commission*, 68 Ill.2d 236, 369 N.E.2d 853 (1977). Where a petitioner fails to prove by a preponderance of the evidence that there exists a causal connection between work and the alleged condition of ill-being, compensation is to be denied. *Id.* The facts of each case must be closely analyzed to be fair to the employee, the employer, and to the employer's workers' compensation carrier. *Three "D" Discount Store v Industrial Commission*, 198 Ill.App. 3d 43, 556 N.E.2d 261, 144 Ill.Dec. 794 (4th Dist. 1989).

The burden is on the Petitioner seeking an award to prove by a preponderance of credible evidence all the elements of his claim, including the requirement that the injury complained of arose out of and in the course of his or her employment. *Martin vs. Industrial Commission*, 91 Ill.2d 288, 63 Ill.Dec. 1, 437 N.E.2d 650 (1982). The mere existence of testimony does not require its acceptance. *Smith v Industrial*

Commission, 98 Ill.2d 20, 455 N.E.2d 86 (1983). To argue to the contrary would require that an award be entered or affirmed whenever a claimant testified to an injury no matter how much his testimony might be contradicted by the evidence, or how evident it might be that his story is a fabricated afterthought. *U.S. Steel v Industrial Commission*, 8 Ill.2d 407, 134 N.E. 2d 307 (1956).

The Illinois Supreme Court has held that a claimant's testimony standing alone may be accepted for the purposes of determining whether an accident occurred. However, that testimony must be proved credible. *Caterpillar Tractor vs. Industrial Commission*, 83 Ill.2d 213, 413 N.E.2d 740 (1980). In addition, a claimant's testimony must be considered with all the facts and circumstances that might not justify an award. *Neal vs. Industrial Commission*, 141 Ill.App.3d 289, 490 N.E.2d 124 (1986). Uncorroborated testimony will support an award for benefits only if consideration of all facts and circumstances support the decision. *See generally, Gallentine v. Industrial Commission*, 147 Ill.Dec 353, 559 N.E.2d 526, 201 Ill.App.3d 880 (2nd Dist. 1990), *see also Seiber v Industrial Commission*, 82 Ill.2d 87, 411 N.E.2d 249 (1980), *Caterpillar v Industrial Commission*, 73 Ill.2d 311, 383 N.E.2d 220 (1978). It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to the witness' testimony. *O'Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v Workers' Compensation Commission*, 397 Ill.App. 3d 665, 674 (2009).

In this matter, the Arbitrator finds Petitioner failed to meet her burden of proof in establishing that an accident arose out of and in the course of her employment with Respondent on June 21, 2022. In support of this finding, the Arbitrator finds Petitioner failed to provide a consistent or credible history of when or how her alleged injury occurred in conjunction with her medical records.

To obtain benefits under the Act, a claimant must establish by a preponderance of the evidence that she sustained an accidental injury "arising out of" and "in the course of" her employment. 820 ILCS 305/1(d) (West 2014); *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, Par. 32; *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 203 (2003); The "arising out of" component is primarily connected with causal connection. *McAllister*, 2020 IL 124848, Par. 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Id.* Par. 36; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). A risk is "incidental to the employment" when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848, Par. 36; *Purcell v. Illinois Workers' Compensation Comm'n*, 2020 IL App. (4th) 200359WC, Par. 18.

To determine whether a claimant's injury arose out of his or her employment, we must first categorize the risk to which the employee was exposed. *McAllister*, 2020 IL 124848, Par. 236; *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 278 (2011). Illinois courts recognize three categories of risks: (1) risks distinctly associated with the employment, (2) risk personal to the employee, and (3) neutral risks. *McAllister*, 2020 IL 12484, Par. 38; *Baldwin*, 409 Ill. App. 3rd at 478.

The first category of risks involves risks that are distinctly associated with employment. "Employment risks include the obvious kinds of industrial injuries and occupational diseases and are universally compensated." *McAllister*, 2020 IL 124848, Par 40; *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 149 (2000). Examples of employment-related risks

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." *McAllister*, 2020 IL 124848, Par. 40; *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 106 (2006). Injuries resulting from a risk distinctly associated with employment are deemed to rise out of the claimant's employment and are compensable under the Act. *McAllister*, 2020 IL 124848, Par 40; *Steak 'n Shake v. Illinois Workers' Compensation Comm'n*, 2016 IL App. (3rd) 150500WC, Par. 35.

The second category of risks involves personal injury to the employee. "Personal risks include nonoccupational diseases" and "injuries caused by personal infirmities such as a trick knee." *McAllister*, 2020 IL 12484. Par. 40; *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63. Injuries resulting from personal risks generally do not arise out of employment. *McAllister*, 2020 IL 12484. Par. 30. An exception to this rule exists when the workplace conditions significantly contributed to the injury or exposed the employee to an added or increased risk of injury. *Id.*; *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1229 (2000).

The third category of risks involves neutral risks that have no particular employment or personal characteristics. *McAllister*, 2020 IL 12484, Par. 44. Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Id.*; *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App. (4th) 120219WC, Par. 27. Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. *McAllister*, 2020 IL 12484, Par. 44; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014 (2011).

In the case of *William Buckley v. Grayslake Fire Protection District*, 19 IWCC 4491576 affirmed in Rule 23 decision *Buckley v. Illinois Workers' Compensation Commission*, 2022 ILApp (2d) 210055WC-U, the Illinois Appellate Court affirmed the Commission's finding the employee did not sustain an accidental injury arising out of his employment under the neutral risk analysis, noting his claim for benefits also failed under the personal risk analysis. The claimant alleged he sustained an injury to the knee while his crew responded to a motor vehicle accident earlier in his shift; however, his testimony at trial was not supported by the other evidence. The Commission noted the employee provided no less than three different versions of the events when he sought medical treatment. In the end, the evidence supported the conclusion that the employee was walking when his knee just gave out. There was otherwise no evidence to show his employment contributed to his knee giving out. He did not trip or fall on a defect or hazard. The evidence did not show he was quantitatively exposed to a risk greater than the general public.

The role of the Commission is to determine the credibility of witnesses. *See, Hosteny v. Illinois Workers' Compensation Commission*, 397 Ill.App.3d 665, 928 N.E.2d 474, 340 Ill.Dec. 475 (1st Dist. 2009) and *Rechenberg v. Illinois Workers' Compensation Commission*, 2018 IL App (2d) 170263WC, 99 N.E.2d 521, 421 Ill.Dec. 277 (2nd Dist. 2018). In both cases, the claimants' testimony was inconsistent with the evidence; thus, the Commission and Appellate Court on appeal denied benefits on the basis the claimants were not credible. Similarly, when a claimant's testimony is inconsistent with her actual behavior and conduct, the Commission has held an that award cannot stand. *McDonald v. Industrial Commission*, 39 Ill.2d 396 (1968) and *Swift v. Industrial Commission*, 52 Ill.2d 490 (1972).

Petitioner's testimony at trial was inconsistent with her reporting of the alleged accident to Respondent, to Concentra Occupational Health and to Dr. Matlock. Petitioner testified she entered the cooler, took out a tray of dough and exited the cooler, heading to the office. She testified she retrieved a set of tools from the office. After she left the office and was heading to the diary cooler, she testified, she was walking across the front of the warehouse when her left knee gave out, locking into a 45-degree bend and becoming painful. She claimed to be carrying the tools at the time, but her testimony was not supported by the other evidence.

The other evidence contradicted Petitioner's testimony. Petitioner completed the accident report with Zamira on June 21, 2022. She signed the report, and she testified the information on the report was accurate. When she completed the accident report, Petitioner stated she exited the Food Court, walked across the Front End and her knee just locked. The description on the accident report had Petitioner coming from the Food Court, not the office, when the alleged incident occurred. She also made no mention she was carrying anything, including a 30 lbs. set of tools, as she was walking. When she arrived at Concentra Occupational Health several hours after the incident, she again reported she was walking, and her knee gave out. She again made no mention of carrying a 30 lbs. set of tools. Petitioner filled out the patient intake/workers' compensation form before seeing Dr. Matlock on June 27, 2022, writing "walking across floor – didn't slip/fall etc." In both the written history she provided to Dr. Matlock's office and the verbal history Dr. Matlock documented in the office notes, Petitioner made no mention of carrying anything, including a 30 lbs. set of tools. She only said she was walking. When her attorney deposed Dr. Matlock, he focused on the act of walking, making no mention in the history and questions to Dr. Matlock that she was allegedly carrying anything when her knee locked. Dr. Matlock did not mention Petitioner carrying anything throughout his deposition.

The Arbitrator finds Petitioner's testimony that she was carrying a 30 lbs. set of tools not credible. The report Petitioner completed on the day of the incident and her reports of how the accident happened to Concentra and Dr. Matlock are inconsistent with her trial testimony and claim she was carrying anything when her knee locked up. The credible evidence supports the conclusion Petitioner was only walking when the incident occurred. The injury to her knee therefore resulted from a condition personal to Petitioner not from an employment risk.

In the *Buckley* case, the claimant reported three versions of the injury when he sought medical treatment leading the Commission to conclude the claimant was only walking when his knee buckled. In this case, Petitioner was consistent with the history she provided to the medical providers. She consistently told the providers she was walking when the incident happened. Her testimony at trial was inconsistent with her prior reporting of the incident. Petitioner's reporting of what she was doing when her knee locked at the time of the incident and the days following is significantly more credible than her testimony at trial. The evidence thus established her knee locked up when she exited the Food Court and walked across the Front End of the warehouse. There is no quantitative evidence to support her contention her employment increased her risk of injury greater than the general public. Her claim failed under both the personal and neutral risk analysis.

The Arbitrator finds that Petitioner's testimony is not sufficient to sustain her burden of proof, especially in light of the long-standing principle expressed in *Shell Oil v. Industrial Comm'n*, 2 Ill.2d 590, 602 (1954), where the Illinois Supreme Court held that contemporaneous medical records are more

reliable than later testimony because "it is presumed that a person will not falsify such statements to a physician from whom he expects and hopes to receive medical aid."

Therefore, taking the evidence in its totality, the Arbitrator finds Petitioner failed to meet her burden in proving she suffered a specific accident arising out of and in the course of her employment on June 21, 2022. The Arbitrator specifically finds Petitioner's testimony lacked credibility as it related to holding the ratchet set, the history to her providers, and both the incident report as well as the intake form for Dr. Matlock.

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

Even though the Arbitrator found Petitioner failed to meet her burden in proving an accident on June 21, 2022, the Arbitrator also finds that Petitioner failed to meet her burden in proving causation.

The Arbitrator reviewed Dr. Matlock's testimony in detail. Dr. Matlock is the only physician who testified in this case. Dr. Matlock opined Petitioner sustained an initial work injury in April of 2019 when she was getting off the trailer and her knee popped. That was the mechanism that was consistent with the ACL diagnosis. Based on the 2019 MRI Petitioner probably had an unstable knee. He explained that when an ACL causes an unstable knee, instability, is giving way when they twist or turn. There is a high rate of a subsequent medial meniscus injury because the medial meniscus is a secondary restraint for the ACL. He further noted the knee was seeing a lot more pressure and a lot more likely to have an injury than someone with a stable knee. He confirmed Petitioner stated between 2019 and June 21, 2022 she had feelings of knee instability. She also had symptoms where the knee would buckle. Dr. Matlock noted these were all symptoms of instability.

Dr. Matlock further noted Petitioner's bucket handle tear was probably caused because she had an unstable knee from a dysfunctional ACL. He continued to opine that the weakened condition of Petitioner's knee from the ACL tear is what eventually led to the bucket handle tear. As such, Dr. Matlock seems to be relating Petitioner's condition to her 2019 injury. The Arbitrator notes that the 2019 injury is not being litigated.

Dr. Matlock further noted Petitioner indicated she was just walking. He did not document that she tripped, slipped, twisted her knee, bumped her knee. Even if the Arbitrator had found Petitioner was carrying the tool set when her knee gave way, the evidence does not support a conclusion the act of carrying the tool set and walking contributed to or increased the risk of injury. Petitioner did not present the question to Dr. Matlock during his deposition, and his testimony was limited solely to the premise she was doing nothing more than walking when her knee locked. Dr. Matlock noted it was feasible that walking could cause a bucket handle tear but unlikely. He noted that bucket handle tears involve some sort of twisting motion, particularly already in an unstable knee. But just walking would not typically be the presenting cause of a bucket handle tear. Based on the history provided Petitioner was just walking at the time her knee locked up. Dr. Matlock opined he thought she had an ACL tear in the first MRI in 2019 and also in the second MRI in 2022. He is presuming the incident in April of 2019 caused the ACL tear. The ACL tear caused the instability, giving way and buckling of Petitioner's knee.

The evidence demonstrated Petitioner suffered a significant ACL tear in her left knee in 2019, which caused instability, giving way, and buckling of her knee.

Based on the medical reporting and the medical testimony, the Arbitrator finds Petitioner has failed to meet her burden in establishing her condition of ill-being in regards to her left knee is causally related to the work incident of June 21, 2022.

Based on the foregoing, the Arbitrator finds Petitioner failed to prove she sustained an accidental injury arising out of and in the course of her employment. The claim for benefits is denied.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	25WC013131
Case Name	Insurance Compliance v. Lupe Landscaping Inc/Guadalupe Perez Garcia (Indiv)
Consolidated Cases	
Proceeding Type	
Decision Type	Commission Decision
Commission Decision Number	26IWCC0033
Number of Pages of Decision	9
Decision Issued By	Amylee Simonovich, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	

DATE FILED: 2/4/2026

/s/ Amylee Simonovich, Commissioner

Signature

STATE OF ILLINOIS)
)
 COUNTY OF Cook)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Illinois Department of Insurance,
 Insurance Compliance Department,

Case # 25WC013131
 24INC00070

Petitioner

v.

Chicago, IL

Lupe Landscaping, Inc. and
 Guadalupe Perez and Rosa Perez, individually
 and as officers,

Employers/Respondents

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the Illinois Department of Insurance, Insurance Compliance Department brings this action, by and through the Office of the Illinois Attorney General, against the above captioned Respondents 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 1,982 days. A hearing was held before Commissioner Simonovich in Chicago, Illinois on December 4, 2025. Proper and timely notice was provided to Respondents. Px1. Petitioner was represented by the Office of the Attorney General. Respondent Guadalupe Perez appeared *pro se* and testified through an interpreter. A record was taken.

Petitioner seeks the maximum fine allowed under the Act, \$500.00 per day for each of the 1,982 days, from October 7, 2018 through March 11, 2024, when Respondents did business and failed to provide coverage for their employees as well as reimbursement for payments made by the Injured Workers Benefit Fund (hereinafter "IWBF") for an employee of Respondent in workers' compensation case 20WC017549 in the amount of \$8,361.28. Petitioner seeks a total award of \$999,361.28.

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 the Respondents under section 4 of the Act in the sum of \$396,400.00, representing \$200.00 per day for each of

the 1982 days and orders Respondent to reimburse the Injured Workers' Benefit Fund in the amount of \$8,361.28, for total penalties of \$404,761.28.

I. Findings of Fact

Investigator Michael Cadman personally served Respondents Lupe Landscaping, Inc., Guadalupe Perez, and Rose Perez with a Notice of Insurance Compliance Hearing on July 23rd and 24th, 2025. Px 2.

On September 29, 2025, Notices of Insurance Compliance Hearing were sent via certified mail to Guadalupe Perez, Rosa Perez, and Lupe Landscaping, Inc. for a November 12, 2025, hearing date. Px 1. On November 12, 2025, Respondent Guadalupe Perez appeared for trial but requested an interpreter. The trial was continued to December 4, 2025, by agreement of the parties.

Doris Acevedo, an Investigator for the Illinois Department of Insurance, Insurance Compliance Department, testified at the hearing.

Inv. Acevedo identified Petitioner's Exhibit 3 as a Notice of Non-Compliance mailed to Guadalupe Perez Garcia, individually and as president of Lupe Landscaping, Inc. The notice states that the Commission's records indicated that Lupe Landscaping, Inc. and Guadalupe Perez Garcia were not in compliance with the requirements of Section 4(a) for the period from October 7, 2018 through March 11, 2024. The notice includes an affidavit indicating service by mail on March 15, 2024. Px 3.

Inv. Acevedo identified Petitioner's Exhibit 4 as a Request for Informal Conference mailed to Guadalupe Perez Garcia individually and as president of Lupe Landscaping, inc. The notice states that the Commission's records indicated that Lupe Landscaping, Inc. and Guadalupe Perez Garcia were not in compliance with the requirements of Section 4 for the period from October 7, 2018 through March 11, 2024 and set an informal conference on April 18, 2024. The notice includes an affidavit indicating service by mail on March 15, 2024. Px 4.

Inv. Acevedo identified Petitioner's Exhibit 5 as a Business Entity Search for Respondents. The Report indicates that Lupe Landscaping, Inc. was formed on February 28, 2008, and was an active corporation. The report also indicates that the registered agent was Guadalupe Perez. Px 5.

Inv. Acevedo testified that in the regular course of her investigation, she also obtained documents related to Lupe Landscaping, Inc. from the Illinois Secretary of State. The reports indicate that the company was incorporated on February 28, 2008. Px 6, p. 2. Guadalupe Perez has been the president since the company was incorporated. Px 6. Rosa Perez was listed as the secretary in the 2024 annual report. Px 6, p. 33.

Inv. Acevedo testified that Lupe Landscaping, Inc. falls under the Workers' Compensation Act's automatic coverage provisions pursuant to Section 3(8), for using sharp

edged cutting tools, Section 3(15) because it uses electric, gasoline, or other power driven tools, and Section 3(17) because they provide services to the public.

Inv. Acevedo further testified that Petitioner requested insurance information regarding the Respondents from the National Council of Compensation Insurance (NCCI) in Boca Raton, Florida. Px 7. The NCCI certified that it is the agent designated by the Commission for the purpose of collecting proof of insurance coverage information on Illinois employers and that their records showed no proof of workers' compensation insurance for Lupe Landscaping, Inc. at any time from October 7, 2018, through March 11, 2024. *Id.*

Inv. Acevedo 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 Lupe Landscaping for the period of October 7, 2018, through March 11, 2024. Px 8.

Inv. Acevedo further testified that Petitioner's Exhibit 9 was a Commission decision case number 20WC017549, Jose Salvador Garcia Sanchez v. Lupe Landscaping, Inc. and IWBf. Px 9. The Arbitrator found that Lupe Landscaping was operating under the Illinois Workers' Compensation Act, . *Id.* at 6. The Arbitrator also found that an employer/employee relationship existed between the claimant, Mr. Sanchez, and employer, Lupe Landscaping, Inc., on June 27, 2020. *Id.* The Arbitrator further concluded that the employer was uninsured on the accident date. *Id.* at 9. The Arbitrator awarded the claimant medical expenses, temporary total disability benefits, and permanent partial disability benefits. *Id.* at 3. The award was entered against the employer and the IWBf pursuant to Section 4(d) of the Act.

Inv. Acevedo further testified that Petitioner's Exhibit 10 showed the IWBf payment made to the workers compensation claimant, Jose Salvador Garcia, in satisfaction of the award in case 20WC017549, in the amount of \$8,361.28. Px 10.

Inv. Acevedo further testified that in the regular course of her investigation, Petitioner requested information regarding the Respondents from the Illinois Department of Revenue. Petitioner submitted Petitioner's Exhibit 11 comprised of certified records of Illinois Withholding Income Tax Returns from the Department of Revenue filed by Lupe Landscaping, Inc. for the fourth quarter of 2018 through third quarter of 2024 and Illinois Small Business Corporation Replacement Tax Returns for 2018-2023. Px 11.

Inv. Acevedo further testified that Petitioner's Exhibit 12 was certified records of Employer's Quarterly Wage Reports for Lupe Landscaping, Inc. for the fourth quarter of 2018 through the third quarter of 2024 from the Department of Employment Security. Px 12.

Inv. Acevedo testified that based upon her investigation, Petitioner determined that Respondent did not have workers' compensation insurance for the period for which it requests relief, from October 7, 2018, through March 11, 2024.

Guadalupe Perez testified via an interpreter. Mr. Perez admitted that he had no information to show that he had insurance during the period of October 7, 2018, through March 11, 2024. Tr. p. 39-40. He further admitted that he spoke with Inv. Acevedo after receiving the notice of noncompliance for this case, and she informed him that he was required to have workers' compensation insurance for his business. *Id.* at 41. He testified that he reached out to an insurance company four or five months ago or perhaps one year ago and provided them with requested documents, but they did not get back to him. *Id.* at 42-43. He admitted that after not hearing back from that company, he did not reach out to any other insurance companies to try to obtain insurance. *Id.* at 43.

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 use sharp edged cutting tools, use electric, gasoline or other power driven equipment, and if they render services to the public at large. 820 ILCS 305/3(8), (15), (17) (West 2004).

The Commission finds that Respondents' business falls within sections Section 3(8), for using sharp edged cutting tools, Section 3(15) because it uses electric, gasoline, or other power-driven tools, and Section 3(17) for rendering services to the public. This finding is based in part on Inv. Acevedo's testimony regarding the nature of Respondents' business. The Commission also takes judicial notice of the findings by the Arbitrator in this regard as contained in the Decision rendered in *Jose Salvador Garcia Sanchez v. Lupe Landscaping, Inc., and the Illinois State Treasurer as Ex Officio Custodian of the Injured Workers' Benefit Fund*, No. 20 WC 017549. The Claimant's testimony therein establish that he was employed as a laborer by Lupe Landscaping, Inc. and was in the business of using a weeder and blower and would also clean houses. 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) (West 2004). 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) (1986). Section 9100.90(d)(3)(E) of our Rules similarly provides that a certification from a Commission employee "that an employer has not been certified as a self-insurer shall be deemed prima facie evidence of that fact." 50 Ill. Adm. Code 9100.90(d)(3)(D) (1986). Section 9100.90(d)(3)(D) of 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(d)(3)(D) (1986).

The Commission analyzes here the culpability of Respondents and the applicability of Section 4(a). Section 4 of the Act requires that all employers of at least one employee who come within the provisions of Section 3 of the Act, and any other employer who shall elect coverage under Section 2 of the Act, provide workers' compensation insurance for the protection of their employees. 820 ILCS 305/4.

In this case, Petitioner submitted a certified finding from the Department of Self-Insurance that no certificate of approval to self-insure was issued to Lupe Landscaping, Inc. for the period of October 7, 2018, through March 11, 2024.

Petitioner also submitted the NCCI certification that Lupe Landscaping, Inc. did not file policy information showing proof of workers' compensation insurance at any time from October 7, 2018, through March 11, 2024. The NCCI certification indicates Respondent did have workers' compensation insurance from March 29, 2018 through October 6, 2018, the date the policy was cancelled.

Inv. Acevedo testified that based upon her investigation, Petitioner determined that Respondents did not provide workers' compensation insurance for the period for which it requested relief, from October 7, 2018, through March 11, 2024.

Furthermore, the Commission finds that Respondent was uninsured on the accident date of June 27, 2020, pursuant to an NCCI certification entered into evidence by the injured Claimant in the case of *Jose Salvador Garcia Sanchez v. Lupe Landscaping, Inc.* and the previous finding of no insurance by the Commission.

Respondents admitted that they did not have workers' compensation insurance of any kind from October 7, 2018, through March 11, 2024. 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 October 7, 2018, through March 11, 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 refuses to pay the

penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty.

820 ILCS 305/4(d) (West 2004).

Section 9100.90(b) of the Rules similarly provides that penalties may be assessed for non-compliance after a reasonable notice and hearing. 50 Ill. Adm. Code 9100.90(b) (1986). Section 9100.90(c) of the Rules describes the proper notice of non-compliance to be served upon the employer and provides that the employer may request an informal conference to resolve the matter. 50 Ill. Adm. Code 9100.90(c) (1986). Section 9100.90(d) of the Rules describes the manner of notice and service for an insurance compliance hearing and the procedure for conducting the hearing. 50 Ill. Adm. Code 9100.90(d) (1986).

In this case, Petitioner submitted into evidence the Notice of Non-Compliance mailed via certified mail to Guadalupe Perez Garcia, individually and as president of Lupe Landscaping, Inc., in the form prescribed by our Rules and including an affidavit of service. While the certified mail receipts were not included in the evidence submitted at hearing, the Commission notes that both Inv. Acevado and Respondent, Guadalupe Perez, testified that they had discussed the document after it had been received in March and April of 2024, demonstrating receipt of the Notice of Non-Compliance. T.30 and 41. Petitioner also submitted the notice for the July 30, 2025, insurance compliance hearing date, in the form prescribed by our Rules, accompanied by signed investigative reports indicating that Lupe Landscaping, Inc. was personally served via its registered agent and officer. Notice of the November 12, 2025, hearing date was sent by certified mail, and that the individual defendant was served via certified mail to their last known address. Guadalupe Perez appeared for the November 12, 2025 hearing, and the trial was continued to December 4, 2025, by agreement of the parties. Guadalupe Perez attended the hearing on December 4, 2025. The insurance compliance hearing allowed the Department of Insurance and Respondents to introduce evidence and testimony. 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*, Ill. Workers' Comp. Comm'n, No. 03 INC 00155, 7 IWCC 1037 (Aug. 2, 2007).

The Commission finds that the period of time during which the Respondents violated the Act by failing to obtain workers' compensation insurance was significant. The Respondents failed to have insurance for 1,982 days, from October 7, 2018, through March 11, 2024. Despite the fact the tax records and wage reports in PX11 and PX12 demonstrate several intermittent periods wherein Respondents did not report any employees, the Commission finds these reports

are not a reliable representation of the employees actually working for Respondents at any given time. This is evident as those records show the Respondents reported no withholding/wages for employees during the period of April 1, 2020 through September 30, 2020, while there has been a finding of injury sustained by an employee of Respondents on June 27, 2020 in case 20 WC 017549. The Commission also notes that the un rebutted testimony of the claimant in that matter was that Respondents had six or seven employees at the time of his hire after April 2020. PX9, p.4. 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 specifically notes that Respondent, Guadalupe Perez, testified at hearing that he was informed by Inv. Acevado of the requirement to obtain workers' compensation insurance coverage in March of 2024, but admitted that, as of the date of hearing, Respondent still had not secured coverage. T.44-45.

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 \$404,761.28 against Respondents, Lupe Landscaping, Inc. and Guadalupe Perez and Rosa Perez, individually and as officers of Lupe Landscaping, Inc.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Lupe Landscaping, Inc., and Guadalupe Perez and Rosa Perez, individually and as officers of Lupe Landscaping, Inc., pay to the Illinois Workers' Compensation Commission the sum of \$404,761.28 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that payment shall be made according to the following procedure: (1) payment of the penalty shall be made by certified check or money order made payable to the Illinois Workers' Compensation Commission; and (2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or the order of the court of review after final adjudication to:

Illinois Workers' Compensation Commission
Fiscal Department
69 W. Washington Street, Suite 900
Chicago, Illinois 60602

Alternatively, pursuant to Illinois Workers' Compensation Commission Rule 9015, an electronic format may be used to accomplish the requirements of this Decision. Respondent(s) may arrange to make an electronic payment by contacting:

Illinois Department of Insurance
Attn: Workers' Compensation Compliance
115 S. LaSalle Street, 13th floor
Chicago, Illinois 60603
Phone: (312) 814-8224

This decision may be judicially reviewed only as described in Section 19(f). This decision may be enforced in the same manner as a judgment entered by a court of competent

jurisdiction and is a debt due and owing to the State and can be enforced to the same extent as a judgment entered by a circuit court. Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 4, 2026

H: 12/04/25

AHS/kjj

051

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

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC007172
Case Name	Corey Kidd v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0034
Number of Pages of Decision	11
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 2/4/2026

/s/ Kathryn Doerries, Commissioner

Signature

23 WC007172

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	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Corey Kidd,

Petitioner,

vs.

NO. 23 WC 007172

State of Illinois – Illinois Department of Transportation,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petitions for Review having been filed by Respondent and Petitioner, and notice given to all parties, the Commission, after considering the issue of 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.

On the Request for Hearing, Respondent stipulated to liability for the medical bills set forth in Petitioner's Exhibit #1. (AX1) The parties also entered into a stipulation on the Request for Hearing, agreeing that all awarded medical bills "shall be paid directly to the medical providers per the fee schedule or PPO agreement, whichever is less." (AX1) The parties also agreed Respondent shall receive a credit for all medical bills previously paid. (AX1) The Order entered by the Arbitrator awarded PPD benefits but did not address medical bills. Accordingly, the Commission modifies the Decision of the Arbitrator to award the medical bills as set forth in PX1, as provided under §8(a) and §8.2 of the Act, pursuant to the stipulations of the parties.

All else is affirmed and adopted.

23 WC007172

Page 2

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$871.73/week for a further period of 71.6 weeks, as provided in Sections 8(e)11 and 8(e)12 of the Act, because the injuries sustained caused the 30% loss use of Petitioner's left foot and 10% loss of use of Petitioner's left leg.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner compensation that has accrued from 08/08/2024 through 12/13/2024, and shall pay the remainder of the award, if any, in weekly payments.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the reasonable and necessary medical expenses as set forth in PX1 directly to the medical providers, at the negotiated rate if applicable, or the lesser of the health care provider's actual charges or the fee schedule, as provided under sections 8(a) and 8.2 of the Act. Respondent shall be entitled to a credit for medical expenses previously paid.

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, this Decision and Opinion on Review of a claim against the State of Illinois is not subject to judicial review.

February 4, 2026

KAD/swj

O11326

42

/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	23WC007172
Case Name	Corey Kidd v. State of Illinois - Illinois Department of Transportation
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Thomas Rich
Respondent Attorney	Shannon Rieckenberg

DATE FILED: 2/7/2025

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



February 7, 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

/s/ Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF FEBRUARY 4 2025 4.16%

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
 NATURE AND EXTENT ONLY**

Corey Kidd
 Employee/Petitioner

Case # **23** WC **07172**

v.

Consolidated cases: _____

SOI/IDOT
 Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Herrin, Illinois**, on **December 13, 2024**. By stipulation, the parties agree:

On the date of accident, **03/08/2021**, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned **\$78,097.00**, and the average weekly wage was **\$1,501.87**.

At the time of injury, Petitioner was **53** years of age, **married** with **1** dependent children.

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

Respondent shall be given a credit of **\$143,649.19** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$5 service connected days** for other benefits, for a total credit of **\$143,649.19 + 5 service connected days**.

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

ORDER

Respondent shall pay Petitioner the sum of \$871.73/week for a further period of 71.6 weeks, as provided in Sections 8(e)11 and 8(e)12 of the Act, because the injuries sustained caused the 30% loss use of of Petitioner's left foot and the 10% loss of use of Petitioner's left leg.

Respondent shall pay Petitioner compensation that has accrued from 08/08/2024 through 12/13/2024, 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.

Jeanne L. AuBuchon
Signature of Arbitrator

FEBRUARY 7 2025

PROCEDURAL HISTORY

This matter proceeded to trial on December 13, 2024, on all disputed issues. The sole issue in dispute is the nature and extent of the Petitioner's injury.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 53 years old and employed by the Respondent on highway maintenance. (AX1, T. 10) On March 8, 2021, he was pouring concrete, stepped off into a hole and turned his left ankle. (T. 10-11)

On March 10, 2021, Petitioner presented to SIH Work Care. (PX3) He was diagnosed with a sprain of the tibiofibular ligament of the left ankle. (Id.) He continued treating with Work Care. (Id.)

The Petitioner underwent a left ankle MRI on April 29, 2021, that showed an osteochondral lesion at the medial aspect of the talar dome with tibiotalar degenerative changes, mild asymmetry of ankle mortise and a slight talar tilt, degenerative marrow edema in the talus adjacent to the sinus tarsi and at the talonavicular articulation, tenosynovitis with a large amount of fluid in the tendon sheaths of the posterior tibia and flexor digitorum tendons, fluid at the musculotendinous junction of the flexor hallucis longus, and an absent anterior talofibular ligament consistent with a tear. (PX5) Work Care referred the Petitioner to orthopedics or podiatry. (PX3)

On June 17, 2021, the Petitioner presented to Dr. Amanda Brazis, a podiatrist at the Orthopedic Institute of Southern Illinois, who examined the Petitioner, reviewed the MRI and diagnosed a rupture of the left ankle ligament and sprain of the tibiofibular ligament. (PX4) She recommended lateral ankle ligament repair and arthroscopy including debridement of the lesion.

(Id.) Petitioner asked to delay the scheduled surgery because of work. (Id.) The Petitioner was given a brace. (Id.) The surgery was further delayed due to the Petitioner having COVID. (Id.)

On August 23, 2022, Dr. Brazis performed left ankle arthroscopy and debridement with repair of the lateral ankle ligaments and deltoid ligaments with Internal Brace augmentation. (PX6) The Petitioner underwent postoperative care with Dr. Brazis and attended physical therapy. On October 31, 2022, the Petitioner reported to Dr. Brazis that he was having increased pain, and his foot would swell so much that he could not wear a shoe. (PX4) He was advised to wear a compression sock. (Id.) These complaints continued at his appointments with Dr. Brazis through February 2023. (Id.) Dr. Brazis said the swelling was likely secondary to him having COPD. (Id.)

The Petitioner sought a second opinion from Dr. Matthew Bradley, an orthopedic surgeon at Metro East Orthopedics. (PX7) He saw Dr. Bradley on March 2, 2023, and reported pain, instability, catching, and swelling. (Id.) Dr. Bradley ordered an MRI arthrogram that was performed on March 9, 2023, and showed postoperative and degenerative changes at the tibiotalar joint with heterogeneous signal in the medial talar dome but no collapse although there was a small cyst developing. (PX8) On April 20, 2023, Dr. Bradley read the MRI as showing an incompetent anterior talo-fibular ligament (ATFL), as the talar tilt was causing excessive force on the medial talus, resulting in grade four chondrosis with subacromial cysts and edema. (PX7) He noted large osteophytes to the anterior of the distal tibia. (Id.) He diagnosed left ankle instability with talar osteochondritis dissecans (OCD) and subchondral cysts in combination with talar edema. (Id.) He recommended surgery. (Id.)

On May 24, 2023, Dr. Bradley performed arthroscopic synovectomy and chondroplasty of the medial talus, internal stabilization of microfracture in the talus, anterior talofibular ligament reconstruction, and arthroscopic osteophylectomy. (PX9) The Petitioner continued to undergo

postoperative care with Dr. Bradley and attended physical therapy. (PX7, PX13) Although the Petitioner showed improvement with stability, strength and range of motion, he continued to report swelling and pain. (PX7) The Petitioner testified that the surgery did not offer him complete relief, and he was having pain that felt like an ice pick when he was walking. (T. 12) On December 6, 2023, Dr. Bradley felt the Petitioner had peripheral nerve irritation and stretching secondary to swelling and referred him to Dr. Robert Hagan, a plastic surgeon with Neuropax Clinic. (Id.)

The Petitioner saw Dr. Hagan on January 29, 2024, for persistent pain, swelling, and hypersensitivity. (PX10) After examination and review of treatment, Dr. Hagan diagnosed a possible deep peroneal and superficial peroneal neuropathy and possible common peroneal neuropathy. (Id.) He recommended a diagnostic nerve block injection, which he performed on March 5, 2024. (Id.) As a result, Dr. Hagan recommended surgical decompression of the superficial and common peroneal nerves and resection of the deep peroneal nerve. (Id.)

On April 17, 2024, the Petitioner underwent decompression neuroplasty of the common peroneal nerve at the level of the fibular tunnel and lateral knee, resection of the deep peroneal nerve at the level of the distal leg and decompression of the superficial peroneal nerve at the distal leg entrapment site. (PX10, PX12) The Petitioner continued with postoperative care and physical therapy, during which time his condition significantly improved. (PX10, PX13)

At the Petitioner's last visit with Dr. Hagan on July 25, 2024, he was "doing very well" and was "very pleased" with the progress he made. (PX10) He had returned to work full duty with no significant complaints. (Id.) He was instructed to continue using compression socks as needed for residual swelling. (Id.) Dr. Hagan placed him at maximum medical improvement. (Id.)

On August 8, 2024, Petitioner returned to Dr. Bradley and reported he was doing well but had some swelling from his mid tibia distally for which he was wearing a compression sock. (PX7) Dr. Bradley noted swelling but felt this would resolve with time. (Id.) He placed the Petitioner at maximum medical improvement. (Id.)

The Petitioner testified that the second surgery and subsequent treatment helped his condition some, but not totally. (T. 13) At the time of arbitration, he was working for the respondent as a highway maintenance lead worker. (T. 10) He said he spends most of the day on his feet and has problems with swelling at the end of his shift. (T. 13) He characterized his work as heavy, and said he is required to wear steel-toed work boots. (T. 14) He said he has to take a lot of breaks and his coworkers help him. (T. 15-16) He said he takes Aleve twice a day. (T. 14) He said he has had to stop various activities, such as working as a DJ and bowling or hiking with his grandchildren, because he can't stand or do any prolonged activity. (T. 15) On cross-examination, he acknowledged that he has not returned to his medical providers or communicated with their offices about his complaints. (T. 16-17)

CONCLUSION

Issue 10: What is the nature and extent of the Petitioner's injury?

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. As a preliminary issue, the Arbitrator finds that the Petitioner's injury involved both the foot/ankle and leg, as Dr. Hagan surgically treated nerves in the leg that were affecting his ankle.

Pursuant to Section 8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011, is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of Section 8.1; (ii) the occupation of the injured employee;

(iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b. The Act provides that, "No single enumerated factor shall be the sole determinant of disability." *Id.*

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

(ii) **Occupation.** The Petitioner continues to work as a highway maintainer with the same physical demands as before the injury, including spending most of the day on his feet, causing swelling at the end of his shift. The Arbitrator places significant weight on this factor.

(iii) **Age.** The Petitioner was 53 years old at the time of the injury. He has several work years left during which time he will need to deal with the effects of his injury. The Arbitrator places some weight on this factor.

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

(v) **Disability.** Although the Petitioner's achieved a good result from the surgeries, he still deals with swelling and has to take breaks and have coworkers help him. He testified that he has had to stop doing certain activities because he can't stand or do any prolonged activity. The Arbitrator puts significant weight on this factor.

Based on the foregoing evidence and factors, the Arbitrator finds that the Petitioner sustained serious and permanent injuries that resulted in the 30 percent loss of use of his left foot and 10 percent loss of his left leg.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC027139
Case Name	Mandi Pugh v. Starbucks
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0035
Number of Pages of Decision	12
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Miles Cahill

DATE FILED: 2/5/2026

/s/Frank Soto, Commissioner

Signature

24 WC 027139

Page 1

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 Choose reason	☐ Second Injury Fund (§8(e)18)
☐ Modify Choose direction	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MANDI PUGH,

Petitioner,

vs.

NO: 24WC027139

STARBUCKS,

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 16, 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 027139

Page 2

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 \$5,100.00. 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.

February 5, 2026

O:1/28/26

FJS/afr

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	24WC027139
Case Name	Mandi Pugh v. Starbucks
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	Giambattista Patti
Respondent Attorney	Miles Cahill

DATE FILED: 4/16/2025

/s/ Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 15 2025 4.06%

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)

Mandi Pugh
 Employee/Petitioner

Case # **24** WC **027139**

v.

Consolidated cases: _____

Starbucks
 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 **Mt. Vernon**, on **2/20/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **5/23/24**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$33,280.52**; the average weekly wage was **\$640.01**.

On the date of accident, Petitioner was **45** 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 **\$4,266.70** for TTD, **\$N/A** for TPD, **\$N/A** for maintenance, and **\$N/A** for other benefits, for a total credit of **\$4,266.70**.

Respondent is entitled to a credit of **\$3,674.68** under Section 8(j) of the Act.

ORDER

Respondent shall pay medical expenses listed in Petitioner's Exhibit 6, as provided in Section 8(a) of the Act. Respondent shall be given a credit for medical benefits that have been paid as provided in Section 8(j) of the Act and shall hold Petitioner harmless for same.

Respondent shall pay Petitioner temporary total disability benefits of \$426.67 per week for the period of 20 and 6/7 weeks from 9/27/24 through 2/20/25. The Respondent is entitled to a credit of \$4,266.70 in TTD benefits paid.

Respondent shall authorize and pay for prospective medical treatment, specifically surgery and follow-up care as recommended by Dr. Steven Kronlage, as provided in Section 8(a) of the Act.

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

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

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

Jeanne L. AuBuchon

Signature of Arbitrator

APRIL 16 2025

PROCEDURAL HISTORY

This matter proceeded to trial on February 20, 2025, pursuant to Sections 19(b) and 8(a) if the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) the causal connection between the accident and the Petitioner's right carpal tunnel syndrome; 2) payment of medical expenses for services from Dr. Kronlage; 3) entitlement to temporary total disability (TTD) benefits; and 4) entitlement to prospective medical care.

FINDINGS OF FACT

On May 23, 2024, the Petitioner was working for the Respondent putting away boxes of cups on the top of a shelf while standing on a ladder when a box tilted, and she reached over to grab it so as not to fall off the ladder, hitting the edge of her hand and bending it backwards. (T. 12-13) She said she experienced pain in her whole wrist. (T. 13)

The Petitioner testified that she could not recall any significant injury to her right wrist before the accident. (T. 14) She denied ever experiencing any numbness or tingling in her wrist prior to the accident. (Id.)

On May 25, 2024, the Petitioner sought treatment at SSM Express Clinic. (PX1, RX1) She complained of right wrist pain for two days that started after pulling a box with her arms extended above her head, and the box caused a hyperextension of her wrist. (Id.) X-rays were negative. (Id.) After an examination by a nurse practitioner, the Petitioner was diagnosed with a right wrist injury, prescribed an anti-inflammatory and a wrist splint and told to rest, elevate and use ice. (Id.) She was allowed to return to work without restrictions. (Id.) The Petitioner said the nurse practitioner told her to wear the brace for "a while." (Id.) She said the nurse practitioner told her to go back to work and see what she could do – but no pushing, pulling or repetitive movement. (Id.)

The Petitioner testified that she went back to work and continued to do everything she was normally doing but was in pain. (T. 17) She said that in addition to pain in her wrist, she had numbness in her thumb. (T. 19)

On June 3, 2024, the Petitioner went to her primary care physicians at SSM Medical Group and saw Nurse Practitioner Nicole Lewis, whom she told she hurt herself at work putting boxes away when one fell, and she caught it with her right hand. (PX2, RX2) She said her thumb was numb and when she turned her hand/arm, she had a pain that went down her arm. (Id.) After an examination, NP Lewis diagnosed thumb tendonitis, ordered a brace with thumb support, prescribed an oral steroid and gave work restrictions of no lifting more than 5 pounds, no repetitive movement and no pushing or pulling. (Id.)

At a follow-up visit on June 11, 2024, the Petitioner was referred to physical therapy. (Id.) At subsequent visits, an MRI and electromyography and nerve conduction study (EMG/NCS) were ordered, and restrictions were continued. (Id.) Diagnoses were updated to include thumb pain, pain of the right forearm and right wrist pain. (Id.) The Petitioner testified that she did not undergo physical therapy or testing that was ordered because it was not approved by workers' compensation. (T. 21)

The Petitioner said she moved to Florida in August 2024 and took a position with the Respondent as an assistant store manager. (T. 24) She sought treatment at American Family Care on August 30, 2024, and reported a hyperextension injury on May 23, 2024 in which her right wrist was bent back. (PX3, RX3) She complained of numbness in her right thumb and wrist pain. (Id.) Dr. John Reese performed an examination and diagnosed a right wrist sprain. (Id.) He gave work restrictions of no lifting more than 10 pounds, no mopping and wearing a wrist brace. (Id.) The Petitioner was instructed to follow up with an orthopedist. (Id.)

The Petitioner testified that the Respondent's nurse case manager gave her information for Dr. Steven Kronlage, an orthopedic hand and wrist surgeon at North Florida Bone & Joint Specialists, and made the appointment for her. (T. 26) She saw Dr. Kronlage on September 12, 2024, and complained of right wrist and thumb pain. (PX4) Dr. Kronlage wrote that the Petitioner had a hard fall on her wrist at work. (Id.) He stated that he would try to send her to therapy, but apparently this was not approved. (Id.) He noted that she had not had any advanced imaging. (Id.) After an examination, Dr. Kronlage diagnosed pain in the right thumb, pain of the right wrist, traumatic rupture of the scapholunate ligament and sprain of ligament of carpometacarpal (CMC) joint of the right hand. (Id.) He ordered X-rays and wrist MRI. (Id.) He gave restrictions of wearing a brace to work and not lifting more than 2 pounds. (Id.)

The MRI was performed on September 14, 2024, at Touchstone Imaging Pensacola. (PX5) At a follow-up visit on September 26, 2024, Dr. Kronlage read the MRI as showing no scapholunate ligament tear but a central triangular fibrocartilage complex (TFCC) tear, a volar oblique ligament tear at the CMC joint of the thumb and edema in the median nerve consistent with carpal tunnel syndrome. (PX4) He diagnosed articular cartilage disorder of the wrist, sprain of the ligament of the CMC joint of the right hand and carpal tunnel syndrome of the right wrist. (Id.) He recommended carpal tunnel release, CMC joint stabilization and wrist arthroscopy with TFCC debridement and/or repair. (Id.) He continued work restrictions. (Id.)

The Petitioner testified that Dr. Kronlage told her that her carpal tunnel was crushed as a result of the injury and the swelling associated with the other injuries. (T. 29) She said she found out from Kronlage's office that workers' compensation denied the carpal tunnel surgery but would cover the other two procedures. (T. 32-33) She elected to proceed with the surgery under her group health insurance, and it was scheduled for December 13, 2024. (T. 33-34) She said that

two days before the surgery, she found out she was pregnant, and the next day she learned that her health insurance denied the surgery. (T. 34) She said Dr. Kronlage's office told her she can move forward with the carpal tunnel surgery while pregnant, but the rest of the surgery would be on hold while she is pregnant. (T. 56) She wants to move forward with surgery. (Id.)

The Petitioner testified that the work restrictions were accommodated until September 27, 2024, and she was told not to return to work. (T. 30) The Petitioner said she received TTD benefits through December 4, 2024. (T. 31) She said she is willing to work under light duty restrictions. (T. 35)

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?

Although Dr. Kronlae did not testify, his records show that he characterized the Petitioner's injury as traumatic and that he was treating the Petitioner's conditions as a workers' compensation injury related to the accident on May 23, 2024.

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).

In this case, the circumstantial evidence showed a chain of events in which the Petitioner was symptom free and able to perform her job duties without restriction before the accident and pain and decreased abilities afterwards. There was no evidence to the contrary.

Therefore, the Arbitrator finds that the Petitioner has met her burden of proof establishing causal connection between the accident and her hand, wrist and thumb conditions.

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

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

There was no evidence presented that any of the treatment the Petitioner received has been unreasonable or unnecessary. Therefore, the Arbitrator finds that the treatment was reasonable and necessary, and the Respondent has not paid for these services. Therefore, the Arbitrator orders the Respondent to pay the medical expenses contained in Petitioner's Exhibit 6. The Respondent shall have credit for any amounts already paid or paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

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

Upon establishing causal connection and the reasonableness and the necessity of recommended medical treatment, employers are responsible for necessary prospective medical care required by their employees. *Plantation Mfg. Co. v. Indus. Comm'n*, 294 Ill.App.3d 705, 691

N.E.2d. 13 (1997). This includes treatment required to diagnose, relieve, or cure the effects of claimant's injury. *F & B Mfg. Co. v. Indus. Comm'n*, 325 Ill. App. 3d 527, 758 N.E.2d 18 (2001).

Dr. Kronlage has recommended three surgical procedures to relieve or cure the effects of the Petitioner's injury. No evidence to the contrary was presented. Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care, specifically surgery and follow-up care as recommended by Dr. Kronlage, and the Respondent shall authorize and pay for such care.

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

An employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990). The ability to do light or restricted work does not preclude a finding of temporary total disability. *Id.* at 121.

The Respondent accommodated the Petitioner's restrictions until September 27, 2024. The Petitioner remains under restrictions and is awaiting surgery for when she is medically cleared to proceed. Therefore, the Petitioner is entitled to TTD benefits pursuant to Section 8(b) of the Act for 20 and 6/7 weeks, from September 27, 2024, through February 20, 2025.

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	24WC004295
Case Name	Robyn Heuring v. State of Illinois - Shawnee Correctional Center
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0036
Number of Pages of Decision	13
Decision Issued By	Maria Portela, Commissioner, Marc Parker, Commissioner

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner

DATE FILED: 2/5/2026

/s/ Maria Portela, Commissioner

Signature

DISSENT

/s/ Marc Parker, Commissioner

Signature

24 WC 004295

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	☐ PTD/Fatal denied
	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Robyn Heuring,

Petitioner,

vs.

NO: 24 WC 004295

State of Illinois, Shawnee Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 13, 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 004295

Page 2

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.

February 5, 2026

o11526

MEP/ypv

049

/s/ Maria E. Portela/s/ Christopher A. HarrisDISSENT

I respectfully dissent from the decision of the Majority. I believe Petitioner's pre-existing knee condition was aggravated by the work accident. I do not believe his condition returned to baseline and would have awarded benefits, including the recommended surgery, accordingly. Therefore, I respectfully dissent.

/s/ Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC004295
Case Name	Robyn Heuring v. State of Illinois - Shawnee Correctional Center
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	William Gallagher, Arbitrator

Petitioner Attorney	Thomas C Rich
Respondent Attorney	Nicole Werner

DATE FILED: 3/13/2025

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



March 13, 2025

/s/ William Gallagher, Arbitrator
Signature

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

INTEREST RATE WEEK OF MARCH 11 2025 4.08%

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

Robyn Heuring
 Employee/Petitioner

Case # 24 WC 04295

v.

Consolidated cases: n/a

SOI/Shawnee C.C.
 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 February 13, 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 _____

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 Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084

FINDINGS

On January 12, 2024, Respondent was operating under and subject to the provisions of the Act.

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

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

Timely notice of this accident was given to Respondent.

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

In the year preceding the injury, Petitioner earned \$80,205.62; the average weekly wage was \$1,542.42.

On the date of accident, Petitioner was 61 years of age, married with 0 dependent child(ren).

Petitioner has received all reasonable and necessary medical services.

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

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

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

ORDER

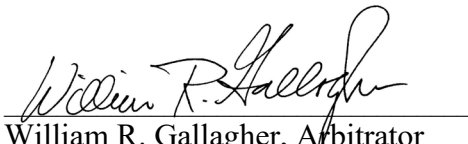
Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 1, for medical services provided to Petitioner from January 12, 2024, through January 29, 2024, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall receive a credit for 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.

Based upon the Arbitrator's Conclusions of Law attached hereto, Petitioner's claim for temporary total disability benefits is denied.

Based upon the Arbitrator's Conclusions of Law attached hereto, Petitioner's claim for 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.



William R. Gallagher, Arbitrator

ICArbDec p. 2

MARCH 13 2025

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 January 12, 2024. According to the Application, Petitioner was "Breaking up inmate fight" and sustained an injury to his "Left knee/leg, head/body as a whole" (Arbitrator's Exhibit 2). Petitioner sought an order for payment of medical expenses, temporary total disability benefits, and permanent partial disability benefits. Respondent stipulated Petitioner sustained a work-related accident, but disputed liability on the basis of causal relationship (Arbitrator's Exhibit 1).

In regard to temporary total disability benefits, Petitioner claimed he was entitled to temporary total disability benefits of five and six-sevenths (5 6/7) weeks, commencing May 7, 2024, through June 16, 2024. Respondent agreed Petitioner was temporarily totally disabled during the aforesated period of time, but disputed liability for same. The primary injury for which Petitioner sought compensation benefits was to his left knee. Petitioner and Respondent stipulated Petitioner previously received a settlement of five percent (5%) loss of use of the left leg for which Respondent was entitled to a credit should permanent partial disability benefits be awarded to Petitioner (Arbitrator's Exhibit 1). The approved Settlement Contract was received into evidence at trial (Respondent's Exhibit 6).

In an Employee Injury Report completed on January 12, 2024, it was noted Petitioner was in the process of securing an individual who had been in an altercation. Petitioner fell backward hitting the back of his head on the floor and also complained of left knee pain (Respondent's Exhibit 1).

In a Supervisor's Report of Injury completed on January 12, 2024, it was noted that while Petitioner was "containing" a fight, he struck his head on the floor. There was no mention of Petitioner having sustained a left knee injury (Respondent's Exhibit 2).

In an Incident Report completed by Petitioner on January 12, 2024, he described having to pull two individuals who were fighting apart and then falling to the floor hitting his head. There was no reference to Petitioner having sustained a left knee injury (Respondent's Exhibit 3).

Following the accident, Petitioner was seen in the ER of St. Francis Medical Center on January 12, 2024. At that time, Petitioner gave a history of having been involved in an altercation with an inmate, falling and striking his head on concrete. Petitioner also complained of acute on chronic left knee pain and that he "likely fell" with his left knee underneath him. An x-ray of Petitioner's left knee was obtained which was initially read as revealing a small possible medial tibial fracture; however, the report of the radiologist revealed moderate degenerative changes, but no fractures (Petitioner's Exhibit 3).

Petitioner was subsequently evaluated by Dr. Matthew Bradley, an orthopedic surgeon, who saw Petitioner on January 29, 2024. At that time, Petitioner informed Dr. Bradley of the accident of January 12, 2024, and stated he was attempting to break up a fight. Petitioner advised he was either pushed or fell backwards away from the inmate, hyperflexing and twisting his left knee, as well as hitting the back of his head (Petitioner's Exhibit 4).

Petitioner previously sustained a work-related injury to his left knee on December 24, 2022, for which he was also treated by Dr. Bradley. The Settlement Contract for five percent (5%) of the left leg previously referenced herein was for the accident of December 24, 2022.

Subsequent to the accident of December 24, 2022, Petitioner was evaluated by Dr. Bradley on January 19, 2023. At that time, Petitioner informed Dr. Bradley he was walking to unlock doors and experienced pain and a popping sensation in his left knee. Petitioner complained of pain when standing for prolonged periods of time, going up/down stairs, standing from a seated position, and squatting. Dr. Bradley ordered an MRI of Petitioner's left knee which was performed on January 19, 2023. That MRI revealed a tear of the posterior horn of the medial meniscus, and advanced tricompartmental chondromalacia. Dr. Bradley opined Petitioner had "significant degenerative disease" in his left knee and recommended conservative non-operative treatment. However, Dr. Bradley also noted that if Petitioner's pain continued despite non-operative treatment, Petitioner would "likely require knee replacement surgery" (Petitioner's Exhibits 4 and 5).

Dr. Bradley continued to treat Petitioner for his left knee pain symptoms and again saw him on February 20, 2023, April 20, 2023, June 15, 2023, September 14, 2023, and October 16, 2023. Dr. Bradley prescribed medication and administered injections into Petitioner's left knee. The injections provided Petitioner with pain relief, but only temporarily. When he saw Petitioner on October 16, 2023, Dr. Bradley administered a viscoelastic supplementation injection. In addition to left knee pain, Petitioner complained of grinding/clicking in his left knee (Petitioner's Exhibit 4).

When Dr. Bradley saw Petitioner on January 29, 2024, Petitioner advised that following the injection he received in October, 2023, he was doing well up until the accident of two weeks prior. Dr. Bradley again saw Petitioner on March 18, 2024. At that time, Petitioner complained of severe pain in his left knee. Dr. Bradley noted Petitioner had tried and failed non-operative treatment and recommended Petitioner proceed with total knee arthroplasty surgery (Petitioner's Exhibit 4).

On May 8, 2024, Dr. Bradley performed surgery on Petitioner's left knee. The procedure consisted of a left total knee arthroplasty (Petitioner's Exhibit 6).

Following surgery, Dr. Bradley continued to treat Petitioner and evaluated him on May 23, 2024. At that time, Petitioner was doing well, walking independently and he denied experiencing any significant pain. When Dr. Bradley again saw Petitioner on July 11, 2024, Petitioner was without pain and continued to perform home exercises. At that time, Dr. Bradley released Petitioner to return to work without restrictions (Petitioner's Exhibit 4).

Dr. Bradley last saw Petitioner on October 7, 2024. At that time, Petitioner stated he was "doing great" and working full duty as well as significant overtime. The only complaint Petitioner had was that he experienced some discomfort when he knelt (Petitioner's Exhibit 4).

At the direction of Respondent, Petitioner was examined by Dr. Timothy Farley, an orthopedic surgeon, on August 27, 2024. In connection with his examination of Petitioner, Dr. Farley reviewed medical records provided to him by Respondent. The medical records reviewed by Dr. Farley were for treatment Petitioner had received in respect to both his left knee injury of

December 24, 2022, and January 12, 2024. Further, Dr. Farley previously examined Petitioner on June 20, 2023, in respect to the accident of December 24, 2022, and he referenced that report as well (Respondent's Exhibit 4).

Dr. Farley noted Petitioner had significant osteoarthritic changes in his left knee which predated the accident of January 12, 2024. He referenced the MRI of January 19, 2023, which he opined was consistent with a diagnosis of left knee arthritis with a medial meniscal tear. Dr. Farley also referenced an x-ray taken on June 20, 2023, (taken in connection with his examination of that date) which also revealed degenerative arthritis in the left knee as well as patellofemoral arthrosis (Respondent's Exhibit 4).

In regard to causality, Dr. Farley opined Petitioner had underlying degenerative arthritis in his left knee which was not caused by the accident of January 12, 2024. He noted Petitioner was undergoing active medical treatment for osteoarthritis and had undergone Visco supplementation injections for same. Dr. Farley opined the accident of January 12, 2024, may have caused a "temporary aggravation" of Petitioner's arthritic complaints, but Petitioner was able to return to full activity afterward. He agreed Petitioner undergoing total knee replacement surgery was medically reasonable and necessary, but that the need for same was not related to the accident of January 12, 2024 (Respondent's Exhibit 4).

Dr. Farley was deposed on October 22, 2024, and his deposition testimony was received into evidence at trial. On direct examination, Dr. Farley's testimony was consistent with his medical report and he reaffirmed the opinions contained therein. Specifically, in respect to causality, Dr. Farley testified Petitioner's osteoarthritic left knee condition was not related to the accident of January 12, 2024. Dr. Farley stated Petitioner was undergoing ongoing treatment for his left knee condition, receiving injections from Dr. Bradley, and was following up with Dr. Bradley every three months to review the success of the injections. Dr. Farley stated Petitioner had "classic findings" of degenerative osteoarthritis, that he would get a shot, the effects would eventually wear off and Petitioner would undergo a knee replacement. Dr. Farley reaffirmed his opinion Petitioner's need for total knee replacement surgery was not related to the accident of January 12, 2024 (Respondent's Exhibit 5; pp 16-20).

On cross-examination, Dr. Farley agreed that Petitioner was doing well up until the accident of January 12, 2024, and he had experienced a significant increase of his left knee pain symptoms following the accident of January 12, 2024. When questioned whether the accident could cause an aggravation of the left knee osteoarthritic condition, Dr. Farley responded it might cause a contusion or bruise, but not a dramatic change in any of the objective structures of the knee (Respondent's Exhibit 5; pp 23-24).

Dr. Bradley was deposed on October 23, 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. Dr. Bradley testified that when he saw Petitioner on January 29, 2024, Petitioner informed him he had sustained a hyperflexion twisting injury to his left knee on January 12, 2024, and his left knee was significantly more painful afterward. Dr. Bradley's findings on examination were similar to the findings on examination he

made in October, 2023, but with Petitioner experiencing more pain. He diagnosed Petitioner as having sustained an exacerbation of underlying arthritis (Petitioner's Exhibit 9; pp 10-13).

Dr. Bradley testified that the need for the total knee replacement surgery he performed was causally related to the accident of January 12, 2024. He agreed Petitioner had arthritis prior to that date for which he had received treatment, but the accident of January 12, 2024, aggravated the underlying disease. Dr. Bradley stated he did not previously recommend Petitioner undergo total knee replacement surgery, but he had advised Petitioner that he could eventually require it at some point in time (Petitioner's Exhibit 9; pp 14-16).

Dr. Bradley testified he reviewed Dr. Farley's medical report of August 27, 2024. He agreed with Dr. Farley that Petitioner had underlying degenerative arthritis in his left knee, but disagreed that the accident of January 12, 2024, only caused a temporary aggravation. Dr. Bradley stated Petitioner never returned to the baseline status he was at prior to the accident. He noted Petitioner continued to have symptoms up until the time he performed surgery (Petitioner's Exhibit 9; pp 20-22).

On cross-examination, Dr. Bradley agreed that when he saw Petitioner on October 16, 2023, he performed an injection and Petitioner was scheduled to return for a follow-up appointment with him on January 8, 2024. However, Petitioner did not keep that appointment. Dr. Bradley also acknowledged he administered a series of injections to Petitioner while he was treating Petitioner in 2023 (Petitioner's Exhibit 9; pp 28-30).

At trial, Petitioner testified that, in respect to the prior left knee injury, no surgery had either been recommended or performed. Petitioner testified that prior to the accident of January 12, 2024, he was working without restrictions, was not missing time from work, taking no medication and was not scheduled to be seen by Dr. Bradley or any other physician for his left knee symptoms. Following the accident of January 12, 2024, Petitioner stated he experienced severe left knee pain when walking and going up/down stairs.

Petitioner testified that after the accident of January 12, 2024, his left knee symptoms did not decrease to what they were prior to the accident. However, Petitioner was able to continue to work following the accident and did so up until the time the surgery was performed in May, 2024.

Conclusions of Law

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

The Arbitrator concludes Petitioner's current condition of ill-being in respect to his left knee is not causally related to the accident of January 12, 2024.

The Arbitrator further concludes that the accident of January 12, 2024, only caused a temporary exacerbation of Petitioner's left knee condition.

In support of these conclusions the Arbitrator notes the following:

While there was no dispute Petitioner sustained a work-related accident on January 12, 2024, it was not possible to determine the exact mechanism of injury to Petitioner's left knee.

The histories of the accident contained in Respondent's reports of the accident and medical records were not consistent as indicated by the following:

In the Employee Injury Report, it was noted Petitioner fell backwards striking his head on the floor and also complained of left knee pain. There was no description as to how Petitioner injured his left knee.

In the Supervisor's Report of Injury, it only referenced Petitioner striking his head on the floor. There was no mention of Petitioner having sustained a left knee injury.

In the Incident Report, which was completed by Petitioner, there was a reference to Petitioner falling to the floor striking his head, but no reference to Petitioner having sustained a left knee injury.

When seen in the ER on the same day of the accident, Petitioner again reported striking his head on concrete and that he "likely fell" with his left knee underneath him.

When Petitioner was evaluated by Dr. Bradley on January 29, 2024, Petitioner stated he was either pushed or fell backwards hyperflexing and twisting his left knee.

At trial, Petitioner testified the two inmates fell on his left knee twisting it.

Based on the preceding, the Arbitrator was not able to determine how Petitioner sustained the injury to his left knee and there was even doubt as to whether he did, in fact, sustain a left knee injury. The Arbitrator has concerns about Petitioner's credibility and specifically notes that in the Incident Report, which Petitioner completed, there was no reference to Petitioner having sustained a left knee injury.

Petitioner apparently experienced an increase in his left knee symptoms following the accident of January 12, 2024.

Petitioner sustained a prior left knee injury on December 24, 2022, for which he was also treated by Dr. Bradley, who administered a series of injections. Dr. Bradley last saw Petitioner on October 16, 2023, administered an injection at that time, and was scheduled to see Petitioner on January 8, 2024. Petitioner did not keep that appointment and, at trial, denied having any follow-up appointments subsequent to October 16, 2023. This also impacts Petitioner's credibility.

There was no dispute Petitioner had a long history of osteoarthritic changes in his left knee prior to the accident of January 12, 2024. While Dr. Bradley did not recommend total knee replacement surgery prior to January 12, 2024, he did discuss the possibility of Petitioner requiring it sometime in the future.

Respondent's Section 12 examiner, Dr. Farley, examined Petitioner both in respect to his accident of December 24, 2022, and January 12, 2024, on June 20, 2023, and August 27, 2024, respectively. Dr. Farley reviewed Petitioner's medical treatment records and diagnostic studies performed in connection with both accidents. Dr. Farley opined that the accident of January 12, 2024, only caused a temporary exacerbation of Petitioner's left knee degenerative osteoarthritis.

While Petitioner testified he was in severe pain following the accident of January 12, 2024, he continued to work at full duty up until the time he underwent surgery in May, 2024.

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

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

The Arbitrator concludes that the medical services provided to Petitioner from January 12, 2024, through January 29, 2024, were 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 for medical services provided to Petitioner from January 12, 2024, through January 29, 2024, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of amounts paid for medical benefits that have been paid and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes following:

Based upon the Arbitrator's conclusions of law in disputed issue (F), Respondent is only liable for the ER visit of January 12, 2024, and Dr. Bradley's initial evaluation of January 29, 2024.

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

Based upon the Arbitrator's conclusions of law in disputed issue (F), Petitioner's claim for temporary total disability benefits is denied.

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

Based upon the Arbitrator's conclusions of law in disputed issue (F), Petitioner's claim for permanent partial disability benefits is denied.

In regard to disputed issue (N) the Arbitrator makes no conclusion of law as this issue is rendered moot because of the Arbitrator's conclusions of law in disputed issues (F) and (L).



William R. Gallagher, Arbitrator

MARCH 13 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010619
Case Name	Sarah McBride v. Magna Exteriors
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0037
Number of Pages of Decision	23
Decision Issued By	Frank Soto, Commissioner, Frank Soto, Commissioner

Petitioner Attorney	Michael Youkhana
Respondent Attorney	Jeff Redick

DATE FILED: 2/5/2026

/s/ Frank Soto, Commissioner

Signature

DISSENT

/s/ Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF WINNEBAGO)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

SARAH McBRIDE,

Petitioner,

vs.

NO: 21 WC 10619

MAGNA EXTERIORS,

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 all issues, and being advised of the facts and law, modifies the Decision of the Arbitrator to find that Petitioner's current condition of Complex Regional Pain Syndrome (hereinafter, "CRPS") is causally related to the February 16, 2021 work accident. Pursuant to its causal finding, the Commission further modifies the Decision of the Arbitrator to award temporary total disability benefits from April 28, 2021 through December 7, 2021 and additional permanent partial disability benefits of 25% PAW pursuant to §8(d)(2) of the Act for Petitioner's CRPS condition. In all other respects, including as it relates to Petitioner's right thumb injury, the Commission affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

I. FINDINGS OF FACT

On February 16, 2021, Petitioner, an assembly line operator, sustained an undisputed accident to her right thumb while trying to put a rubber grommet into a lift gate. On her third attempt to place the grommet, Petitioner heard a loud pop as her right thumb twisted out of position. She immediately reported the incident to her line lead.

Petitioner initially presented to Ortho Illinois on February 18, 2021, with complaints of right thumb and hand pain. X-rays of the right hand revealed no fracture, dislocation, or bony pathology. PA Cory Belnap, under the supervision of Dr. Robin Borchardt, diagnosed Petitioner with a sprain of the right MCP joint, restricted Petitioner to left-handed work only, and prescribed over-the-counter medications. Petitioner testified that she returned to work immediately while

under those light duty restrictions. The following day, February 19, 2021, Petitioner called Dr. Borchardt's office to complain of shooting pain up to the elbow with swelling in all fingers.

On February 22, 2021, Petitioner returned to Dr. Borchardt noting some improvement. Dr. Borchardt transitioned Petitioner to a Velcro thumb spica split and maintained her light duty restrictions. However, at her next visit on March 1, 2021, Petitioner reported increased 10 out of 10 right thumb pain with limited range of motion and weakness. To rule out a possible ligament tear, Dr. Borchardt ordered an MRI of the right hand. She otherwise fitted Petitioner with a comfort cool brace and continued her work restrictions.

On March 3, 2021, Petitioner presented to Swedish American Medical Center ER complaining of increased right hand numbness that radiated into her elbow and shoulder. Petitioner feared her thumb splint was too tight and affecting her circulation. Dr. Anthony Niezyniecki diagnosed Petitioner with right hand numbness with carpal tunnel versus neurapraxia on the median nerve. He removed the metal portion of Petitioner's splint, as he believed it was compressing the nerve. Petitioner indicated that her numbness then began to subside.

Shortly thereafter, on March 6, 2021, the MRI of Petitioner's right hand was obtained and demonstrated a small interstitial tear in the extensor tendon of the thumb and sprain of the medial collateral ligament of the MCP joint. On March 11, 2021, Petitioner presented to Dr. Borchardt to review the MRI results and raised a new complaint of pain radiating into her wrist. Dr. Borchardt noted that Petitioner had increased pain and swelling that was global throughout her hand, as well as cold and mottled skin. Dr. Borchardt expressed concern that Petitioner had developed CRPS of the right upper extremity. She prescribed gabapentin and physical therapy, which Petitioner began on March 16, 2021. Petitioner's physical therapist noted that she demonstrated significant CRPS symptoms with guarding of her entire right upper limb.

On April 1, 2021, Petitioner returned to Dr. Borchardt with increased pain complaints in the entire right side of her body from her shoulder to her toes. Petitioner further reported that she was unable to move her right hand and arm at times. Dr. Borchardt diagnosed Petitioner with CRPS Type 1 of the right upper extremity, as well as a sprain of the MCP joint in the right thumb. Dr. Borchardt indicated that Petitioner would need a pain management evaluation if she did not improve in the next two weeks. In the interim, she refilled Petitioner's gabapentin prescription, recommended Tylenol for the pain, and maintained the light duty restrictions.

When Petitioner returned to Dr. Borchardt on April 14, 2021, she reported worsening pain that had spread through her body. Dr. Borchardt found that Petitioner's initial right thumb injury had resolved with no further treatment indicated; however, she now complained of significant discomfort in her right hand, wrist, forearm, and upper arm. Dr. Borchardt did not believe Petitioner met the criteria for CRPS at that time. Nevertheless, she recommended cyclobenzaprine, gabapentin, and continued physical therapy to address the symptoms.

On April 28, 2021, Petitioner complained to Dr. Borchardt of tremors and difficulty keeping her right hand open. She also noted symptoms radiating down to her right leg, as well as the same symptoms in her left hand. On examination, Petitioner was unable to relax her right hand from a fist position. Dr. Borchardt refilled Petitioner's medications but suggested that a

psychological etiology could be causing her symptoms, as they did not fit the criteria for CRPS. When she followed up on May 25, 2021, Petitioner complained of right leg shakiness while driving, muscle spasms in her thumb, and right leg pain. Dr. Borchardt wanted Petitioner to be evaluated by her neurologist, whom she was already seeing for migraines.

At Respondent's request, Petitioner underwent a §12 examination performed by Dr. Kenneth Candido on June 1, 2021. Dr. Candido opined that Petitioner had sustained an isolated right thumb injury that did not lead to CRPS, but which did produce generalized right upper extremity complaints that were exaggerated, non-physiological, and unrelated to the work injury. Dr. Candido found that Petitioner had no neurological issues that correlated to the accident; and thus, demonstrated symptom magnification. Dr. Candido wanted Petitioner to undergo a psychological assessment to further consider symptom magnification or a malingering condition.

Shortly thereafter, on June 28, 2021, another §12 report was issued by Dr. Michael Birman of Hand to Shoulder Associates. At the time of this examination, Petitioner reported experiencing pain all the time that shot up her right upper extremity and extended to her shoulder, neck, back, and axilla. She indicated that the left upper extremity also sometimes mimicked the right upper extremity's presentation, although not as severe. Petitioner denied any prior history of right thumb or upper extremity problems. Dr. Birman opined that Petitioner had sustained a right thumb sprain as a result of her work accident that had since resolved at MMI. However, Dr. Birman otherwise found that Petitioner's complaints of severe right upper extremity pain and dysfunction were not causally related to the work accident and did not meet the diagnostic criteria of CRPS.

On July 1, 2021, Petitioner presented to Dr. Timothy Lubenow at Rush Pain Center upon treating physician Dr. Borchardt's referral. Petitioner complained of persistent pain in the right upper extremity, thumb, elbow, and shoulder that made activities of daily living difficult. Dr. Lubenow diagnosed Petitioner with CRPS Type 1 of the right upper extremity and indicated that Petitioner's physical examination met the following criteria for a CRPS diagnosis: sudomotor (edema or asymmetry in sweating); vasomotor (skin discoloration or temperature asymmetry); sensory (allodynia or hyperalgesia); and motor/trophic (decreased ROM, tremors, weakness, dystonia, skin or nail changes). (Rx 3, p. 14-16). He recommended a series of stellate ganglion blocks in coordination with physical therapy and prescribed several medications, including Lyrica, tizanidine, Remeron, and Welbutrin. Dr. Lubenow thereafter administered the first right-sided stellate ganglion block on July 8, 2021. At that visit, Petitioner complained of 10 out of 10 right upper extremity pain with associated symptoms of swelling, color changes, increased sweating, hypersensitivity, and temperature fluctuations. Petitioner proceeded to undergo the second and third stellate ganglion blocks on July 22, 2021 and August 4, 2021.

On August 10, 2021, Petitioner presented to Patricia Merriman, PhD at Rush Pain Clinic for a psychological evaluation for a trial spinal cord stimulator. After an hour assessment, Dr. Merriman concluded that Petitioner was a good candidate for the trial for her CRPS. On August 18, 2021, Dr. Tolga Suvar, also of Rush Pain Center, implanted the trial spinal cord stimulator. When Petitioner followed up with Dr. Suvar on August 25, 2021, she reported substantial 100% pain relief in the right upper extremity. Dr. Suvar noted that during the course of the trial, Petitioner had been able to increase her activity and tolerate progressively advanced activity levels. As a result, Petitioner underwent the permanent implantation of the spinal cord stimulator and

internal pulse generator on September 17, 2021.

On December 1, 2021, Dr. Candido authored a §12 addendum after reviewing additional records from Rush Pain Center. The additional records did not change Dr. Candido's previous opinions. Dr. Candido again found insufficient evidence to support a CRPS diagnosis.

Petitioner testified that after receiving the spinal cord stimulator, she felt fantastic and remained pain-free the majority of the time. Petitioner testified that she was not in any pain as she sat at the hearing, although her hand felt cold. Petitioner still experienced some pain throughout her body but characterized the pain as tolerable with the aid of the spinal cord stimulator. Despite the significant pain relief, Petitioner testified that she still had ongoing skin discoloration as well as hot and cold symptoms. Petitioner testified that she never had any of these symptoms prior to her work accident.

Petitioner was terminated from her position with Respondent after the placement of the spinal cord stimulator and began working for a different employer on December 8, 2021. Petitioner's job duties at her new employment included running a register, changing the garbage, and cleaning bathrooms. She classified this position as light duty work. Petitioner resigned from this new job in March or April of 2024. At the time of the hearing, Petitioner was not working but was not under any work restrictions from a medical provider.

II. CONCLUSIONS OF LAW

Based upon on a review of the record in its entirety, the Commission sees the evidence differently and modifies the Decision of the Arbitrator to find that Petitioner's condition of CRPS in the right upper extremity is causally related to the work accident of February 16, 2021. In so finding, the Commission relies on the more credible opinions of Dr. Lubenow and treating physician Dr. Borchardt.

Petitioner was working full duty without any prior right upper extremity symptoms at the time of the accident. Although Petitioner's initial injury was to her right thumb, she began raising complaints of CRPS symptoms within days of the accident. Specifically, on February 19, 2021, Petitioner called Dr. Borchardt's office to complain of shooting pain up to the elbow with swelling in all fingers. While in the process of treating her thumb sprain, on March 11, 2021, Petitioner further complained to Dr. Borchardt of pain radiating into her wrist. On examination, Dr. Borchardt observed increased swelling globally throughout Petitioner's hand, as well as cold and mottled skin. Due to these symptoms, Dr. Borchardt expressed concern that Petitioner had developed CRPS. Shortly thereafter, on March 16, 2021, Petitioner's physical therapist also noted that Petitioner demonstrated significant CRPS symptoms with guarding of her right upper limb.

Petitioner's complaints of CRPS symptoms progressed to include the entire right side of her body and remained consistent as she presented to Dr. Lubenow on July 1, 2021. Dr. Lubenow diagnosed Petitioner with CRPS Type 1 of the right upper extremity. Throughout Petitioner's treatment, including with Dr. Lubenow and Rush Pain Center, she noted instances of 10 out of 10 right upper extremity pain with associated symptoms of swelling, color changes, increased sweating, hypersensitivity, and temperature fluctuations up until she received the spinal cord

stimulator. The Commission notes Dr. Lubenow's opinion that said symptoms satisfy the Budapest Criteria for diagnosis of CRPS. Following the placement of the spinal cord stimulator, Petitioner noted significant pain relief, although some more tolerable symptoms remained.

Accordingly, the Commission finds the evidence establishes that Petitioner suffered from CRPS of the right upper extremity that was causally related to the work accident. Specifically, the Commission notes that Petitioner had no prior history of right upper extremity symptoms prior to her work related accident, she promptly complained of consistent CRPS symptoms post-accident and was quickly diagnosed with CRPS, initially by her treating physician and confirmed by Dr. Lubenow. Moreover, the Commission finds the opinion of Dr. Lubenow more credible than the opinions of §12 physicians Drs. Candido and Birman given the success of the spinal cord stimulator in relieving Petitioner's pain and the failure of Drs. Candido and Birman to sufficiently rebut Dr. Lubenow's findings, opinion, and successful treatment.

Consistent with its causal finding, the Commission modifies the Arbitrator's decision and awards an additional period of temporary total disability benefits commencing April 28, 2021, when Respondent's light duty accommodations ended, to December 7, 2021, after which Petitioner returned to work with a different employer. The Commission further modifies the Arbitrator's decision and awards 25% PAW for Petitioner's CRPS condition based on its analysis of the Illinois Workers' Compensation Act's §8.1b factors. This award under §8(d)(2) of the Act is in addition to the award of 25% loss of use of the right thumb under §8(e) awarded by the Arbitrator for Petitioner's right thumb condition.

In reviewing permanent partial disability for the CRPS condition, the Commission must consider the enumerated criteria established in §8.1b, including (i) the reported level of impairment pursuant to (a) [AMA "Guides to 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 as corroborated by treating medical records. 820 ILCS 305/8.1b(b). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id.*

Regarding criterion (i), no AMA impairment rating was presented by either party. The Commission thus assigns this factor no weight.

Regarding criterion (ii), Respondent employed Petitioner as an assembly line operator at the time of the accident and was able to accommodate her light duty restrictions until her termination. Following the placement of Petitioner's spinal cord stimulator, she was released from treatment without restrictions and found employment with a different employer on December 8, 2021. The Commission assigns moderate weight to this factor.

Regarding criterion (iii), Petitioner was 29 years old on the accident date. The Commission acknowledges that Petitioner has a multi-decade work-life expectancy based on her age and thus assigns this factor some weight.

Regarding criterion (iv), Petitioner returned to her pre-accident job with Respondent and was eventually released with no physical restrictions. Petitioner was also able to secure different

employment after being terminated by Respondent and did not testify as to a negative impact on her future earning capacity. The Commission thus assigns this factor little weight.

Regarding criterion (v), Petitioner's CRPS condition required treatment in the form of three stellate ganglion blocks, a spinal cord stimulator, medication, physical therapy, and work restrictions. After the placement of the spinal cord stimulator, Petitioner felt fantastic and remained pain-free the majority of the time. She was in no pain at the time of the hearing, although she noted that her hand felt cold. Petitioner testified that she still experienced ongoing pain throughout her body, but that pain was tolerable thanks to the permanent spinal cord stimulator. Nevertheless, she continued to note ongoing skin discoloration and temperature fluctuations. The Commission thus assigns this factor significant weight.

Based on the above factors, the Commission finds that Petitioner's condition of CRPS of the right upper extremity resulted in a loss of 25% to the PAW, given that she receives significant pain relief from the permanent spinal cord stimulator but continues to experience some persistent pain, skin discoloration, and temperature changes. In all other respects not stated herein, and specifically as it relates to Petitioner's right thumb injury, the Commission affirms and adopts the Decision of the Arbitrator.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 28, 2025, is modified as stated herein. In all other respects, the Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary total disability benefits of \$420.99 per week for 32 weeks, commencing April 28, 2021 through December 7, 2021, as provided in §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of \$378.88 a week for 125 weeks, because the injury sustained caused a 25% loss of use of the PAW, as provided in §8(d)2 of the Act, as related to Petitioner's CRPS condition. In addition, the Commission otherwise affirms and adopts the Arbitrator's permanency award of 25% loss of use of Petitioner's right thumb under §8(e) of the Act.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$70,000.00. 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.

February 5, 2026

O: 12/10/25

FJS/mek

046

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

DISSENT

I respectfully dissent from the Decision of the majority and would have instead affirmed and adopted the well-reasoned Decision of the Arbitrator, specifically finding that Petitioner failed to prove by a preponderance of credible evidence that she suffered from CRPS that was causally related to the work accident of February 16, 2021. In so finding, I am persuaded by the consistent opinions of Petitioner's initial treating doctor, Dr. Borchardt, and Respondent's two §12 examiners, Dr. Candido and Dr. Birman, all of whom agreed that Petitioner's physical examination findings failed to satisfy the criteria for a CRPS diagnosis.

Although initially contemplative of a CRPS diagnosis, Dr. Borchardt ultimately determined that Petitioner failed to meet the diagnostic criteria for CRPS on April 14, 2021. At this time, Dr. Borchardt found that Petitioner's initial right thumb injury had resolved with no further treatment indicated. Nevertheless, Petitioner complained of severe 10 out of 10 pain both at rest and with activity throughout her entire body.¹ Dr. Borchardt believed that Petitioner's pain complaints were out of proportion to her physical examination findings. When Petitioner returned on April 28, 2021 complaining of the same symptoms in her left hand as well as radiating down her right leg, Dr. Borchardt expressed concern that Petitioner's symptoms had a psychological etiology. Dr. Borchardt again found that Petitioner did not fit the criteria for a CRPS diagnosis, as there was no change in color or temperature noted on her physical examination.

In his §12 report dated June 1, 2021, Dr. Candido also found that Petitioner failed to meet the criteria for a CRPS diagnosis. Dr. Candido opined that Petitioner had suffered an isolated right thumb injury that did not lead to CRPS and called Petitioner's generalized right upper extremity complaints exaggerated, non-physiological, non-work-related, and nonsensical both anatomically and based on the natural history of her type of injury. Dr. Candido found that Petitioner did not have any neurological issue that could be correlated to the injury, and therefore, he believed severe symptom magnification, and possibly malingering, was present. Upon his examination, Dr. Candido indicated that several characteristics of CRPS were not present, specifically he noted no

1. During the period in which Petitioner was complaining to Dr. Borchardt of 10 out of 10 pain, she nevertheless continued to work full-time with Respondent under accommodated duty. Petitioner's ability to continue working full-time is inconsistent with her alleged severe and debilitating 10 out of 10 pain complaints.

vasoconstriction, no color disparities, no edema or atrophy, no sweating abnormalities, no abnormal growth of hair or nails, no tremor, and only a minimal increase with no decrease in temperature. Since he found Petitioner's presentation to lack anatomical and physiological sense, Dr. Candido concurred with Dr. Borchardt's recommendation for a psychiatric examination to assess for abnormal illness behavior or an underlying personality disorder.

Consistent with the opinions of Dr. Borchardt and Dr. Candido, another §12 opinion was provided by Dr. Birman on June 28, 2021 finding that Petitioner's clinical presentation failed to meet the diagnostic criteria for CRPS. Dr. Birman believed Petitioner had sustained an isolated right thumb injury in the work accident that had since reached MMI. However, he opined that Petitioner's ongoing complaints involving the right upper extremity, as well as other parts of her body, were physiologically inconsistent with the work injury or a mechanical condition involving the right upper extremity.

Although Petitioner subsequently presented for a psychological evaluation with Dr. Merriman on August 10, 2021, this assessment lasted only one hour and was for the limited purpose of evaluating Petitioner for a spinal cord stimulator. As such, it fell short of the thorough psychological assessment that Dr. Borchardt and Dr. Candido recommended to consider whether a psychological etiology was responsible for Petitioner's complaints. With clearance from Dr. Merriman, Petitioner received a trial spinal cord stimulator on August 18, 2021, followed by a permanent spinal cord stimulator on September 17, 2021. After implanting the spinal cord stimulator on September 17, 2021, Dr. Tolga Suvar's postoperative diagnoses included chronic pain, failed back surgery syndrome, and chronic lumbar radiculopathy. No other records were submitted into evidence regarding these potential diagnoses or their effect on Petitioner's condition.

After the placement of the spinal cord stimulator, Dr. Candido provided a §12 addendum on December 1, 2021 that disputed the validity of Dr. Merriman's psychological evaluation due to its lack of any standardized assessments. Dr. Candido stated that Petitioner was never adequately nor independently assessed using a battery of psychological and personality tests aimed at determining her underlying mood or personality condition. Dr. Candido maintained his opinions that Petitioner failed to meet the criteria for CRPS, and instead, Petitioner's clinical presentation had an underlying psychological etiology that had not yet been properly assessed. He further noted that the descriptions in Petitioner's medical records of edema and skin color abnormalities did not comport with the photographs he obtained of Petitioner during his initial §12 examination on June 1, 2021. For those reasons, Dr. Candido did not believe the spinal cord stimulator was appropriate.

Dr. Lubenow's opinion that Petitioner's symptoms support a CRPS diagnosis is directly rebutted by the consistent opinions of Drs. Borchardt, Candido, and Birman. Three independent doctors, Drs. Borchardt, Candido, and Birman, all examined Petitioner and made the same observations that were inconsistent with a CRPS diagnosis. All three doctors found Petitioner's symptoms to be mostly subjective without confirmation by objective testing. As such, the record disproves Dr. Lubenow's opinion and overwhelmingly suggests that Petitioner's ongoing complaints had a psychological etiology that manifested in severe symptom magnification. Dr. Merriman's brief one hour psychological assessment of Petitioner, which did not include standardized assessments aimed at identifying an underlying mood or personality disorder, failed

to disprove the presence of a psychological etiology.

Petitioner's prior medical records were further indicative of a potential psychological etiology. Specifically, on March 16, 2018, Petitioner's past medical history was noted by Swedish Medical Center ER to include anemia, depression, bipolar disorder, and anxiety. When she thereafter returned to the ER on December 1, 2020, Petitioner's history was positive for anemia, concussion, anxiety, and possible neuromuscular disorder causing chronic dyspnea on exertion. The past history of such conditions lends additional support to the opinions of Dr. Borchardt, Dr. Candido, and Dr. Birman that Petitioner's pain complaints could have a psychological etiology.

Additionally, Petitioner's claimed global resolution of pain throughout her entire body from the spinal cord stimulator is inconsistent with its placement in Petitioner's right upper extremity. The spinal cord stimulator was placed in Petitioner's right upper extremity for the purpose of treating her right upper extremity symptoms. There is no medical explanation provided as to how such treatment, which was focused on the right upper extremity, somehow resolved Petitioner's pain throughout her entire body and all four extremities. As such, Petitioner's claimed resolution of pain throughout her entire body from the spinal cord stimulator further supports the opinions of Dr. Borchardt, Dr. Candido, and Dr. Birman that a potential psychological component was involved.

For these reasons as stated herein, I dissent from the Decision of the majority and would have found that Petitioner failed to prove that she suffered from CRPS that was causally related to the work accident.

/s/ Frank J. Soto
Frank J. Soto

February 5, 2026

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC010619
Case Name	Sarah McBride v. Magna Exteriors
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	13
Decision Issued By	Michael Glaub, Arbitrator

Petitioner Attorney	Al Koritsaris
Respondent Attorney	Jeff Redick

DATE FILED: 5/28/2025

/s/ Michael Glaub, Arbitrator
Signature

INTEREST RATE WEEK OF MAY 28 2025 4.16%

STATE OF ILLINOIS)
)SS
 COUNTY OF Winnebago)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION**

Sarah McBride

Employee/Petitioner

Case # **21 WC 10619**

v.

Magna Exteriors

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Michael A. Glaub**, Arbitrator of the Commission, in the city of **Rockford**, on **March 25, 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 2/16/2021, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, the 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, the Petitioner earned \$32,835.92; the average weekly wage was \$631.46.

On the date of accident, Petitioner was 29 years of age, *married* with 2 children under 18.

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, \$ 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 sustained a compensable injury as part of her employment with the Respondent on February 16, 2021. Said injury was to the right thumb. The Petitioner's condition associated with the right thumb and the work injury at issue resolved and the Petitioner achieved a state of Maximum Medical Improvement as of April 28, 2021.

All claims for Temporary Total Disability benefits are denied.

Respondent shall pay Petitioner Permanent Partial Disability benefits of \$378.88 a week for 19 weeks, because the injury sustained caused 25% loss of use of the Petitioner's right thumb, as provided in Section 8(e)1.

No medical bills are in dispute and the Petitioner does not require any further medical treatment associated with the injuries at issue in this matter.

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

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

Michael A. Glaub

Signature of Arbitrator

MAY 28 2025

FINDINGS OF FACT

21 WC 01619 was presented for hearing on March 25, 2025, before the Illinois Workers' Compensation Commission.

Ms. Sarah McBride (Petitioner) was 29 years old and employed by Magna Exteriors, on February 16, 2021 (Arb. Ex. 1). Her stipulated Average Weekly Wage was \$631.46 (id). Petitioner testified at hearing that she was employed as an assembly line operator (T. 7). Her job required her to work multiple jobs on the assembly line and she rotated between positions on a regular basis (id). On February 16, 2021, the Petitioner was using her right thumb to put a rubber grommet into a lift gate (T. 8). According to the Petitioner, she was pressing the grommet with her right thumb when she heard a loud pop (id). The Petitioner testified that she had an onset of pain in the right thumb joint (T. 9).

The Petitioner initially sought medical treatment with Dr. Borchardt of OrthoIllinois on February 18, 2021 (T. 10) (PX 6) and described pain as being limited to the right thumb (T. 10, T. 26) (PX 6).

The Petitioner testified that her right thumb was casted (T. 10) (PX 6). The Petitioner was placed under restrictions of one-handed work (T. 11) (PX 6). Initially, Petitioner testified that Respondent was unable to accommodate those restrictions (T. 11). But Petitioner then stated that she returned to work for the Respondent under said restrictions (T. 11). Medical records confirm that Petitioner was working within stated restrictions through, at least, April 29, 2021 (PX 6, p. 47).

Petitioner testified that she returned for follow up care on March 1, 2021. The Petitioner's thumb was put in a splint and an MRI was recommended (T. 11-12).

The Petitioner testified that she returned for follow up care with Dr. Borchardt on March 11, 2021, with complaints of pain spreading from the thumb joint across her fingers into the elbow and into the shoulder (T. 13). The Petitioner remained on work restrictions which were accommodated by the Respondent (id).

On April 1, 2021, the Petitioner returned to Dr. Borchardt and testified that pain complaints had extended down into the right side of her body over to her left hand and left leg (T. 14).

By April 14, 2021, when the Petitioner returned to Dr. Borchardt, she stated that “pain was everywhere” and “there wasn’t anything that wasn’t in pain” (T. 15).

Records associated with Petitioner’s care with OrthoIllinois showed the Petitioner’s pain complaints had improved (PX 6). As of February 22, 2021, they were 0 on a scale of 10 at rest (PX 6). Records from OrthoIllinois indicate the Petitioner was being seen for a work injury to the right thumb with specific designation of the work-related injury to that body part found in the records from February 18, 2021, February 22, 2021, March 1, 2021, March 11, 2021, April 1, 2021, April 14, 2021 and April 28, 2021 (PX 6). During the course of that treatment period, the Petitioner remained under work restrictions and records show that the Petitioner was continuing to work and perform work activities for the Respondent (PX 6).

According to the April 28, 2021, treatment record from OrthoIllinois, the Petitioner’s strain of her right thumb and index finger have resolved and no further treatment or care for the right thumb was indicated (PX 6, p. 48). Dr. Borchardt noted that the Petitioner was there for neurologic complaints in the arm and offered “concern that she may have psychological etiology causing her symptoms” (id).

On June 1, 2021, the Petitioner was seen by Dr. Kenneth Candido for the purposes of an Independent Medical Examination pursuant to Section 12 of the Illinois Workers' Compensation Act, at the request of the Respondent (T. 15) (RX 1) (RX 3). The Petitioner testified that she attended said IME but offered very little recollection as it related to the events of the examination (T. 16).

Dr. Candido's report states the Petitioner's injuries related to the February 16, 2021, work incident limited to the right thumb and a diagnose of a small interstitial tear in the extensor tendon of the right thumb, with a sprain of the medial collateral ligament of the right thumb. Dr. Candido specifically stated that the Petitioner did not have complex regional pain syndrome but that there was symptom magnification with possible malingering (RX 1, p. 28) (RX 3, p. 32). Further, he noted the Petitioner's chronic tobacco consumption could impact and worsen pain complaints unrelated to the work injury at issue (RX 1, p. 28).

Dr. Candido noted the reference in the records of Dr. Borchardt from April 28, 2021, noting concern that the Petitioner may have psychological etiology causing symptoms (RX1, p. 29). Based on his examination and the reference in the records, he recommended psychological evaluation (RX 1, p. 30).

On June 24, 2021, Dr. Michael Birman evaluated the Petitioner for the purposes of an Independent Medical Examination pursuant to Section 12 of the Illinois Workers' Compensation Act (T. 16). Dr. Birman assessed the Petitioner from an orthopedic standpoint and rendered opinions related to the Petitioner's condition as detailed in his report of June 28, 2021 (RX 2). Based on the mechanism of injury, which was described as not particularly forceful, he opined that the Petitioner sustained a right thumb sprain as a result of the February 16, 2021, injury described by the Petitioner (RX 2, p. 7).

He specifically stated that the injury associated with the described work incident was limited to the right thumb. He stated that in his assessment the Petitioner lacked requisite criteria for a determination of RSD or CRPS (RX 2, p. 7).

He went on to state that the Petitioner did not require any further care as a result of the February 16, 2021, injury and that there were no restrictions associated with the right thumb injury and the February 16, 2021 injury and that the Petitioner had achieved Maximum Medical Improvement related to that condition (RX 2, p. 8).

The Petitioner sought care with Dr. Timothy Lubenow of University Pain Center with an initial presentation for treatment of July 8, 2021 (T. 17) (PX 3). According to the Petitioner upon presentation, pain had spread from the thumb across the hand into her arm and elbow into the shoulder and the right side of the neck, extending down into the right leg and across to the left hand, left arm and left leg (T. 18).

The Petitioner testified that she underwent a nerve block injection and obtained short term relief related to the pain complaints (T. 19) (PX 3).

Dr. Lubenow recommended the Petitioner undergo a trial spinal cord stimulator (PX 3). The Petitioner testified that she underwent the spinal cord stimulator trial on August 18, 2021 (T. 20) (PX 3). According to the Petitioner she obtained relief following that trial and a operation to insert a permanent spinal cord stimulator was conducted on September 17, 2021 (T. 21) (PX 3).

The Petitioner testified that she felt “fantastic” at the time of her testimony and that she was “not in pain” (T. 22).

The Petitioner testified to the fact that her position with the Respondent had been terminated (T. 22). Though Petitioner never testified when that happened. She stated that she began employment with a new employer as of December 8, 2021 (T. 37). She continued

working in that position until March or April of 2024 when she “quit working there” after resigning from employment (T. 38).

The Petitioner is not currently under any physical medical restrictions (T. 36).

Based on a review of the additional medical records detailing Petitioner’s treatment, Dr. Kenneth Candido offered an addendum report dated December 1, 2021, associated with the above-referenced Petitioner (RX 3). Specifically, he opined that there was insufficient evidence for CRPS Type I or Type II of the right extremity and furthermore he disputed the validity of the psychological evaluation conducted as part of the assessment of this Petitioner by Dr. Patricia Merriman (RX 3, pp. 31-32).

Dr. Candido specifically stated that the assessment lacked standardized assessments (id). There were no changes in his opinions as it related to the Petitioner’s diagnosis and that it was limited to the right thumb injury with a small tear in the extensor tendon of the thumb with a sprain at the medial collateral ligament of the thumb (RX 3, p. 31). He went on to specifically state that no complex regional pain syndrome was present and that the Petitioner was engaging in symptom magnification with possible malingering (RX 3, p. 32). Any ongoing needs for disability or treatment were deemed unrelated to the February 16, 2021, incident (RX 3, pp. 32-33).

It is noted that Dr. Candido’s examination of the above-referenced Petitioner was more than an hour in duration (RX 1, p. 1). At hearing, the Petitioner testified that the exam was a “fifteen minute appointment” (T. 33) though she admitted she could not state specifically how long the examination was (T. 17). She later agreed that if the records indicated the examination was an hour, she could not dispute that (T. 33-34).

CONCLUSIONS OF LAW

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law set forth below. Section 1(b)3(d) of the Act provides that, in order to obtain compensation under the Act, the Petitioner bears the burden of showing, by a preponderance of evidence, that he or she has sustained accidental injuries arising out of and in the course of employment. 820 ILCS 305/1(b)3(d). To obtain compensation under the Act, the Petitioner has the burden of proving, by a preponderance, all the elements of his or her claim, *O'Dette v. Industrial Commission*, 79 Ill. 2d 249, 253 (1980), including that there is some causal relationship between the employment and injury, *Caterpillar Tractor Co. v. Industrial Commission*, 129 Ill. 2d 52, 63 (1989).

The Petitioner testified in open hearing before the Arbitrator who had an opportunity to view the Petitioner's demeanor under direct examination and under cross-examination. The Arbitrator evaluated the testimony of the Petitioner in consideration of all evidence in the record. The Arbitrator finds that the Petitioner appeared to be sincere. However, the Petitioner's testimony was not corroborated by and at times not consistent with medical records and objective evidence and the record as a whole.

In Support of Arbitrator's Decision Relating to (F) Is Petitioner's condition of ill-being causally related to the injury? The Arbitrator finds and concludes as follows:

There is no dispute that the Petitioner was working for the Respondent on February 16, 2021, and as part of that position she was placing grommets into lift gates. The Petitioner credibly testified as to the nature of the work she performed and that by applying pressure using her right thumb to the grommet, she sustained an onset of pain. The initial presentation of records related to treatment with Dr. Borchardt and OrthoIllinois corroborate that condition and its connection to the work activities described.

The records of Dr. Borchardt and OrthoIllinois (PX 6) show that the Petitioner's complaints upon initial presentation were limited to the right thumb. Further, treatment records show that the Petitioner's pain in the right thumb had improved.

Subsequently, there were complaints of diffuse pain that extended through the hand and into the upper right extremity. With continued treatment appointments, the Petitioner's complaints of pain continued to spread. Ultimately, the Petitioner testified to the fact that it was her contention that the Petitioner's right thumb pain had spread entirely through the right upper extremity down into the left upper extremity and both lower extremities.

Based on the experience of this Arbitrator, such progression of pain is unusual. As such, looking to the medical records it is significant to note that Dr. Borchardt had opined that the Petitioner's work related injury was limited to the right thumb and that condition had resolved as of April 28, 2021. At that point he had determined that the conditions associated with the Petitioner's right thumb had resolved and that there was no further treatment required. He stated that the Petitioner had neurological complaints associated with the arm and expressed concern that those complaints may have a psychological etiology.

Dr. Candido offered his assessment and found that the Petitioner did not meet the diagnostic criteria for Complex Regional Pain Syndrome and offered concerns associated with the potential psychological component related to the Petitioner's malingering and pain symptom magnification. Similarly, Dr. Birman found that the Petitioner's condition had resolved as of the time of his Independent Medical Examination and there was no further care or treatment required as a result of the work related injuries.

It is understood that the Petitioner and Dr. Lubenow seem to relate the diffuse pain throughout the Petitioner's body to the injury at issue.

In totality, the records offer an explanation of that progression and do not support a finding that the Petitioner sustained diffuse pain syndrome throughout her body as a result of the right thumb injury at issue. The opinions of Dr. Borchardt, Dr. Birman and Dr. Candido specifically state that is not the case.

The records of Dr. Lubenow are deemed inconclusive on the issue.

The Illinois Workers' Compensation Act is clear that the burden of proving the existence of injury and entitlement to benefits is the Petitioner's in order to prove compensability. In the current case it is determined that the Petitioner has failed to show ongoing complaints and treatment need as a result of the February 16, 2021, work injury at issue in this case after April 28, 2021.

The Arbitrator finds that the Petitioner sustained an injury to her right thumb as a result of the described work incident and that the treatment and care rendered through April 28, 2021, were related thereto. All subsequent claims of disability, treatment need and care are not causally related to the injury at issue.

In Support of Arbitrator's Decision Relating to (K) What temporary benefits are in dispute? The Arbitrator finds and concludes as follows:

Based on the findings related to the issue of causal connection above, it is determined that Petitioner's condition had resolved as of April 28, 2021. Records show that the Petitioner had been working under restrictions for the Respondent. Specifically, records from OrthoIllinois indicate Petitioner was working under restriction through at least April 28, 2021. Petitioner's allegation is that TTD is owed from March 14, 2021, through December 8, 2021. However, the record shows Petitioner was working through April 28, 2021, when she reached MMI. As such, no Temporary Total Disability benefits are owed.

In Support of Arbitrator's Decision Relating to (L) What is the nature and extent of the injury? The Arbitrator finds and concludes as follows:

With regard to Subsection (i) of § 8.1b(b), the Arbitrator notes that no permanent partial disability impairment report and/or opinion was submitted into evidence. The Arbitrator gives no weight to this factor.

With regard to Subsection (ii) of § 8.1b(b), the occupation of the employee, the Arbitrator notes records reveal that the Petitioner was employed as an assembly line operator. This occupation requires petitioner to work with her hands and likely fine dexterous movements with her right thumb. The Arbitrator finds that this factor weighs in favor of increased permanence.

With regard to Subsection (iii) of § 8.1b(b), the Arbitrator has considered this factor and notes the Petitioner was 29 years at the time of the accident. The Arbitrator finds the petitioner will have to live the residuals of this injury for a longer duration than that of an older worker. The Arbitrator finds that this factor weighs in favor of increased permanence.

With regard to Subsection (iv) of § 8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes that there was no evidence of any diminished earnings capacity as a result of the petitioner's right thumb injury. The Arbitrator finds that this factor weighs in favor of decreased permanence.

With regarding to Subsection (v) of § 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator has considered this factor. The Petitioner's right thumb condition was treated with a cast and splint. The condition stabilized without any documented medical evidence of reduced function or evidence of disability. The Arbitrator notes the Petitioner's condition was deemed to have achieved a state of Maximum Medical Improvement as it relates to the injury at issue. There is no medical evidence indicating any period of ongoing disability or impairment based on the evidence contained in the records of Dr. Borchardt and

reports of Dr. Candido and Dr. Birman. The Arbitrator finds that this factor weighs in favor of decreased permanence.

Based on the above-referenced factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained Permanent Partial Disability to the extent of 25% loss of use of the right thumb pursuant to Section 8(e)1.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC007589
Case Name	Kim Sikorski v. ED Miniat, LLC
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0038
Number of Pages of Decision	13
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	Tyler Berberich
Respondent Attorney	Jeff Redick

DATE FILED: 2/5/2026

/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

KIM SIKORSKI,

Petitioner,

vs.

NO: 24 WC 07589

ED MINIAT, LLC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) and §8(a) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of average weekly wage, whether Petitioner's current condition of ill-being is causally related to the February 12, 2024 accidental injury, entitlement to medical expenses, entitlement to 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

Petitioner raised this issue in its Response Statement of Exceptions, thus preserving its' ripeness for review.-The Arbitrator found that average weekly wage ("AWW") equaled \$567.54. For the reasons set forth below, we modify average weekly wage up to \$778.99.

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).

Applying the evidence in the record to the four methods, we find it appropriate to use the second method to calculate AWW, as Petitioner's earnings listed in Respondent's Exhibit 3 and hours worked listed in Respondent's Exhibit 4 indicate Petitioner worked 52 weeks prior to the accident, but lost five or more calendar days during this period. The record reflects Petitioner worked 1,064.64 regular hours during the relevant time period, and 105.72 overtime ("O.T.") hours. Petitioner provided un rebutted testimony that she occasionally worked mandatory O.T. on some Saturdays. These mandatory O.T. dates include March 11, 2023, March 25, 2023, April 22, 2023, April 29, 2023, June 3, 2023, December 9, 2023, January 6, 2024, January 13, 2024, and January 20, 2024, and total 48.22 hours. *See Respondent's Exhibit 4*.

In accordance with *D.J. Masonry Co. v. Industrial Commission*, the Commission calculates the number of weeks and parts thereof by dividing the number of days Petitioner actually worked by the number of days in a full work week. 295 Ill. App. 3d 924, 933-34 (1st Dist. 1998). Petitioner worked 155 days in the year prior to the accident. *See Respondent's Exhibit 4*. She testified she worked 8 hours per day, five days per week. Dividing 155 days by five (a five day week) equals 31 weeks and parts thereof of work.

Petitioner earned \$25,120.73 in regular earnings during this time period. She also earned \$2,916.11 in overtime earnings. However, only mandatory O.T. earnings of 48.22 hours x \$19.20

hourly wage should be included in the calculation. *See Respondent's Exhibit 3.*¹ Thus, in the preceding year, Petitioner earned: $(\$25,120.73 + (48.22 \text{ mandatory O.T. hours} \times \$19.20 \text{ hourly wage} = \$925.82))$; thus $\$25,120.73 + 925.82 = \$26,046.55$. Nevertheless, Petitioner claimed earnings of \$24,148.70 on the Request for Hearing form, thus she is bound by this claim. See *Walker v. Industrial Commission*, 345 Ill. App. 3d 1084, 1088 (4th Dist. 2004). These claimed earnings divided by the 31 weeks worked correspond to an AWW of \$778.99. Accordingly, the Commission modifies and increases the AWW from \$567.54 to \$778.99.

II. Temporary Total Disability

While the Commission agrees with the Arbitrator's award of the temporary total disability ("TTD") time period from March 7, 2024 through October 30, 2024 (34 weeks), we must modify the calculation of the monetary benefit to conform to the above modification of AWW.

With the aforementioned AWW finding of \$778.99, we find that Petitioner is entitled to TTD benefits of \$519.33/week for 34 weeks.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 4, 2025, as modified above, is hereby affirmed and adopted.

IT IS THEREFORE FOUND BY THE COMMISSION that Petitioner's current bilateral wrist conditions of ill-being are causally related to the work accident.

IT IS FURTHER FOUND BY THE COMMISSION that Petitioner's average weekly wage equals \$778.99.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$519.33 per week for a period of 34 weeks, representing March 7, 2024 through October 30, 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.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay the sum of \$12,378.18 for outstanding medical expenses as detailed in Petitioner's Exhibit 9, as provided in §8(a) and subject to §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the right wrist arthroscopy and TFCC debridement with a possible Wafer procedure as recommended by Dr. John Fernandez 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.

¹ Exhibit shows Petitioner's hourly wage was \$19.20.

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 \$45,100.00. 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.

February 5, 2026

RAW/wde

/s/ *Rachel A. Wesley*

O: 12/10/25

/s/ *Carolyn M. Doherty*

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/s/ *Frank J. Soto*

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	24WC007589
Case Name	Kim Sikorski v. ED Miniat, LLC
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	Elaine Llerena, Arbitrator

Petitioner Attorney	Tyler Berberich
Respondent Attorney	Jeff Redick

DATE FILED: 3/4/2025

/s/Elaine Llerena, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF MARCH 4, 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)

Kim Sikorski

Employee/Petitioner

v.

Ed Miniat Inc.

Employer/Respondent

Case # **24 WC 007589**

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 30, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On the date of accident, **February 12, 2024**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$24,971.60**; the average weekly wage was **\$567.54**.

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

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$378.36 per week for 34 weeks, commencing March 7, 2024, through October 30, 2024, as provided in Section 8(b) of the Act.

Respondent shall pay outstanding reasonable and necessary medical services of \$12,378.18, 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 a right wrist arthroscopy and TFCC debridement with a possible Wafer procedure, as recommended by Dr. John Fernandez, as provided in 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

March 4, 2025

FINDINGS OF FACT

This matter proceeded to hearing on October 30, 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).

Testimony

On February 12, 2024, Petitioner was employed as a line packer for Respondent. (T. 6-7) Petitioner's job involved packing meats, weighing the meats, putting meat into film and palletizing the final product. *Id.* Each package of meat weighed 10 pounds. (T. 7) Petitioner took each 10-pound piece of meat, put it into a bowl on a scale to weight it, then twisted the meat into the film. (T. 7-8) This activity required Petitioner to twist, turn, grip and grasp with her hands. *Id.* Petitioner performed this task for her entire shift. (T. 8)

Petitioner testified that she worked 40 hours a week, 8 hours per day, 5 days per week. (T. 20-21) If Petitioner worked over 8 hours in a day or over 40 hours in a week, she would be paid overtime at time-and-a-half. *Id.* If she worked on Saturdays, that would be paid at time-and-a-half as well. (T. 21) Petitioner testified that Saturday work was mandatory and explained that she knew it was mandatory by the sign put up on the board informing all employees of mandatory Saturday work. *Id.*

Prior Medical Condition

Petitioner underwent a right carpal tunnel release in July 2023 and a left carpal tunnel release in September 2023. (T. 14) Petitioner returned to full duty work on November 20, 2023, and did not undergo any additional treatment or care associated with her bilateral carpal tunnel. (T. 14-15) Following this treatment, Petitioner did not have any issues regarding her hands or wrists prior to February 12, 2024. *Id.*

Accident

On February 12, 2024, Petitioner slipped on a piece of raw chicken on Respondent's shop floor, fell forward and landed on the ground with her arms extended. Petitioner's hands and wrists struck the ground first, and then her left knee. (T. 8-9, 28-29) Petitioner felt instant pain in her wrists and reported the accident to her supervisor. (T. 10) Her supervisor placed her in a lighter duty job where she would not have to use her hands or wrists for the rest of her shift. *Id.*

Summary of Medical Records

Petitioner went to Physicians Immediate Care on February 14, 2024. (PX2) Petitioner complained of bilateral wrist pain. Petitioner reported slipping and falling at work on February 12, 2024, hitting both wrists on the ground. LaDonna Russell NP noted Petitioner had undergone bilateral carpal tunnel surgeries in 2023. X-rays showed no fracture or other acute finding. Russell diagnosed Petitioner as having pain in unspecified wrist and unspecified sprains of the right and left wrist. She instructed Petitioner to wear wrist splints for the next 5-7 days and provided the following work restrictions, effective until February 21, 2024: no pushing/pulling more than 5 pounds; no lifting more than 5 pounds over the shoulder, from waist to shoulder, or below waist; use proper lifting techniques as directed and wear splint(s) as directed. An addendum to this visit indicates that Petitioner called on February 15, 2024, requesting to be taken off work due to severe pain and her concern that Respondent would not honor the work restrictions. Petitioner was instructed to wear splints and, if necessary, the clinic would call and speak to her supervisor, and she could return for re-evaluation. A few hours later, Petitioner called again claiming she could not move her wrists and again asked to be taken off work. She was

again instructed to go to work and see what she could do and advised that she was welcome to seek a second opinion.

Petitioner followed up at Physicians Immediate Care on February 16, 2024, February 20, 2024, and March 5, 2024. Petitioner complained of ongoing pain in her wrists and difficulty working. Amy Kosnar Parker NP, added the following work restrictions: avoid prolonged twisting and strong gripping with both hands; limit repetitive motion with both hands; and no repetitive twisting and grasping. On February 20, 2024, Matthew Coello PA ordered physical therapy.

On March 7, 2024, Petitioner saw Dr. John Fernandez at Midwest Orthopaedics. (PX1) Petitioner described the February 12, 2024, work accident and complained of ongoing bilateral wrist pain, the right worse than the left. Dr. Fernandez ordered an MRI and CT of the wrists, prescribed medication and took Petitioner off work. Dr. Fernandez opined that Petitioner's symptoms were not related to her previous bilateral carpal tunnel treatment.

Petitioner underwent MRIs of the wrists on March 14, 2024. The MRI of the right wrist revealed degenerative appearance of the TFCC with ECU tendinosis and tenosynovitis, small dorsal ganglion cyst deep to the extensor tendons of the CMC joints, and mild distal radial ulnar joint osteoarthritis with a small effusion. The MRI of the left wrist revealed findings suggestive of chronic tears of the ulnar attachments of the TFCC with associated ECU tendinosis and tenosynovitis, and volar radial sided ganglion cysts. Dr. Fernandez reviewed the MRIs on March 19, 2024, continued physical therapy and kept Petitioner off work.

On March 20, 2024, Petitioner underwent a Section 12 examination (IME) by Dr. Michael Vender at Respondent's request. (RX1) Petitioner described the February 12, 2024, work accident and complained of ongoing pain in her wrists, the right worse than the left, with occasional shooting pain into her forearms. Dr. Vender examined Petitioner and reviewed Petitioner's medical records. Dr. Vender diagnosed Petitioner as having an ulnar impaction of the right wrist and some bilateral degenerative arthritis in the distal radioulnar joints. Dr. Vender found that Petitioner's subjective complaints were not supported by his objective findings, adding this is consistent with symptom magnification. Dr. Vender opined that the findings in Petitioner's wrists were degenerative in nature and, thus, preexisting, and that any aggravation would be temporary. Dr. Vender further opined that Petitioner did not sustain injuries that would require being off work completely nor did he identify any pathology that would indicate the need for work or activity restrictions. Dr. Vender indicated that if Petitioner sustained any injury, of which Dr. Vender was not convinced, Petitioner would have recovered satisfactorily and that she was a maximum medical improvement (MMI) and would not benefit from further treatment.

On April 23, 2024, Petitioner returned to Dr. Fernandez, who noted only minimal improvement in Petitioner's condition with physical therapy. (PX1) Dr. Fernandez determined that, due to the failure of conservative treatment, Petitioner required surgery and recommended a right wrist arthroscopy and TFCC debridement with a possible Wafer procedure. Dr. Fernandez kept Petitioner off work until the surgery approval. On May 16, 2024, Dr. Fernandez issued a narrative report addressing Dr. Vender's IME report. (PX5) Dr. Fernandez disagreed with Dr. Vender's findings and noted that Petitioner had no symptoms before the work injury, that her complaints had been consistent since the work accident and were supported by the diagnostic exams, specifically the MRIs. Dr. Fernandez diagnosed Petitioner as having bilateral wrist pain, primarily ulnar sided wrist pain related to TFCC internal derangement, as well as DRUJ degeneration. Dr. Fernandez also disagreed with Dr. Vender's claim that Petitioner could return to work full duty, opining that Petitioner could possibly return to work in a very light duty capacity, assuming accommodations could be made. Even then, Dr. Fernandez added, Petitioner would likely continue to have pain and symptoms. Dr. Fernandez maintained that

surgical intervention is warranted and opined that Petitioner's symptoms/complaints were causally related to the work accident.

Dr. Fernandez's evidence deposition was taken on September 6, 2024. (PX6) Dr. Fernandez's testimony is consistent with his findings and opinions in the medical records and his narrative report. Dr. Vender's evidence deposition was taken on September 20, 2024. (RX5) Dr. Vender's testimony was consistent with his findings and opinions in his IME report.

Petitioner's Current Condition

Petitioner testified to ongoing pain and swelling in her wrists as she goes about her day-to-day-activities. (T. 19) Petitioner explained that she has pain when she tries to vacuum or wash dishes. *Id.* Petitioner testified that pretty much anything she tries to do with her wrists causes pain and swelling in her wrists. *Id.* Petitioner further testified that she wishes to undergo the surgery recommended by Dr. Fernandez. *Id.*

CONCLUSIONS OF LAW

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

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

The Arbitrator notes that whether a causal connection exists between an accident and a condition of ill-being may be determined from both medical and non-medical evidence. *International Harvester v. Industrial Comm'n*, 93 Ill.2d 59, 442 N.E.2d 908 (1982). A chain of events demonstrating a prior condition of good health, an accident and a subsequent disabling condition of ill-being will suffice to establish a causal connection between the accident and the employee's injury. *Westinghouse Elec. Co. v. Industrial Comm'n*, 64 Ill.2d 244, 356 N.E.2d 28 (1976); *Plano Foundry Co. v. Industrial Comm'n*, 356 Ill. 186, 190 N.E.2d 255 (1934); *Phillips v. Industrial Comm'n*, 187 Ill.App.3d 704, 543 N.E.2d 946 (1989). There is no dispute that Petitioner sustained work accident on February 12, 2024. The Arbitrator notes that Petitioner has consistently described the work accident as a fall on her outstretched wrists. The Arbitrator further notes that while Petitioner underwent treatment for bilateral carpal tunnel syndrome, her treatment for those conditions was in 2023 and that Petitioner returned to full-duty work on November 20, 2023. Petitioner was working full-duty and did not have any bilateral wrist issues or symptoms following her return to work on November 20, 2023, until the February 12, 2024, work accident.

The Arbitrator notes that Dr. Vender diagnosed Petitioner as having an ulnar impaction of the right wrist and some bilateral degenerative arthritis in the distal radioulnar joints, but found Petitioner's subjective complaints were not supported by his objective findings and a sign of symptom magnification. Dr. Vender opined that the findings in Petitioner's wrists were preexisting and, if any aggravation of her preexisting findings were aggravated, the aggravation was temporary in nature. As such, Dr. Vender found Petitioner has reached MMI and could return to work without restrictions. Dr. Fernandez, however, disagreed with Dr. Vender's findings and noted that Petitioner's complaints had been consistent since the work accident and were supported by the diagnostic exams, specifically the MRIs. The MRIs revealed degenerative appearance of the TFCC with ECU tendinosis and tenosynovitis, small dorsal ganglion cyst deep to the extensor tendons of the CMC joints, and mild distal radial ulnar joint osteoarthritis with a small effusion in the right wrist, and findings suggestive of chronic tears of the ulnar attachments of the TFCC with associated ECU tendinosis and tenosynovitis, and volar radial sided ganglion cysts in the left

wrist. Dr. Fernandez diagnosed Petitioner as having bilateral wrist pain, primarily ulnar sided wrist pain related to TFCC internal derangement, as well as DRUJ degeneration. Dr. Fernandez found that Petitioner could possibly work in a very light duty capacity, however, she would continue to have pain and symptoms even with light duty restrictions. Dr. Fernandez further opined that Petitioner's ongoing bilateral wrist issues were causally related to the work accident. Noting Petitioner's ongoing pain and symptoms in the wrists following the work accident and the findings in the MRIs, the Arbitrator finds the findings and opinions of Dr. Fernandez more persuasive than those of Dr. Vender.

Based on the above, the Arbitrator finds Petitioner's current conditions of ill-being regarding her bilateral wrists causally related to the February 12, 2024, work accident.

WITH RESPECT TO ISSUE (G), WHAT WERE THE PETITIONER'S EARNINGS, THE ARBITRATOR FINDS AS FOLLOWS:

The Arbitrator notes that the burden is on Petitioner to show full time work or earnings are to be divided by entire work weeks. *Ricketts v. Industrial Commission*, 251 Ill.App.3d 809, 623 N.E.2d 847, 191 Ill. DCC.257 (4th Dist. 1993). Further, average weekly wage is to be calculated based upon "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." 820 ILCS 305/10.

The Arbitrator notes Respondent provided as Respondent's Exhibit 3 an audit of Petitioner's wages and Petitioner's Time Detail Report as Respondent's Exhibit 4. The exhibits show the hours and weeks worked by Petitioner from February 24, 2023, through February 23, 2024, and that Petitioner made \$19.20 an hour during that period. Petitioner testified that she worked 40 hours a week, 8 hours per day, 5 days per week and if she worked beyond those hours, she was paid overtime at time-and-a-half. Additionally, if she worked on Saturdays, that would be paid at time-and-a-half as well and that Saturday work was mandatory. A review of RX3 and RX4 shows that Petitioner did not work 40 hours a week on average. Instead, the evidence shows that Petitioner earned \$25,120.73 over 44 weeks in the year preceding the work accident, and that \$972.04 was what she made in overtime pay during that period. Petitioner worked 1,064.64 regular hours and 105.72 overtime hours. Of those overtime hours, 42.86 hours were the mandatory Saturdays on March 11, 2023, March 25, 2023, April 22, 2023, April 29, 2023, December 9, 2023, January 6, 2024, January 13, 2024, and January 20, 2024. Therefore, the Arbitrator finds that Petitioner earned \$24,971.60 in the year preceding the accident ($25,120.73 - 972.04 = 24,148.69$; $42.86 \times 19.20 = 822.91$ so $24,148.69 + 822.91 = 24,971.60$), for an average weekly wage of \$567.54 ($24,971.60 / 44 = 567.54$).

Based on the above, the Arbitrator finds that Petitioner's average weekly was \$567.54.

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 condition of ill-being regarding her bilateral wrists is causally related to the February 12, 2024, work accident. The Arbitrator further notes

that Petitioner's treatment took place following the work accident to treat injuries sustained following the undisputed work accident.

Based on the above, the Arbitrator finds that Respondent shall pay outstanding medical expenses as detailed in Petitioner's Exhibit 9, totaling \$12,378.18, as provided in Sections 8(a) and 8.2 of the Act.

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 condition of ill-being regarding her bilateral wrists is causally related to the February 12, 2024, work accident and that she finds the findings and opinions of Dr. Fernandez more persuasive than those of Dr. Vender. The Arbitrator further notes that, after the failure of conservative treatment for Petitioner's ongoing bilateral wrist conditions, Dr. Fernandez recommended a right wrist arthroscopy and TFCC debridement with a possible Wafer procedure.

Based on the above, the Arbitrator finds that Respondent shall authorize and pay for prospective medical care in the form of a right wrist arthroscopy and TFCC debridement with a possible Wafer procedure as recommended by Dr. Fernandez, as provided in 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 condition of ill-being regarding her bilateral wrists is causally related to the February 12, 2024, work accident. The Arbitrator further notes that Dr. Fernandez took Petitioner off work on March 7, 2024, and has not released Petitioner to return to work in any capacity.

Based on the above, the Arbitrator finds that Petitioner is entitled to temporary total disability benefits from March 7, 2024, through October 30, 2024.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	03WC062004
Case Name	Terrance McGlennon v. City of Springfield, CWLP
Consolidated Cases	
Proceeding Type	8(a)/19(h) Petition
Decision Type	Commission Decision
Commission Decision Number	26IWCC0039
Number of Pages of Decision	14
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Steven Berg
Respondent Attorney	L. Robert Mueller

DATE FILED: 2/6/2026

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TERRANCE MCGLENNON,

Petitioner,

vs.

NO: 03 WC 62004

CITY OF SPRINGFIELD, CWLP,

Respondent.

DECISION AND OPINION ON REVIEW PURSUANT
TO §19(h) and §8(a) OF THE ACT

This matter comes before the Commission pursuant to Petitioner's petition for additional permanent partial disability benefits under Section 19(h) of the Act and additional medical expenses under Section 8(a) of the Act. For reasons stated below, the Commission grants Petitioner's petition.

I. PROCEDURAL HISTORY

On September 18, 2003, Petitioner, who worked for Respondent as a locator, fell into a hole covered in grass and injured his left knee, hips, and lower back. On February 4, 2009, Petitioner's workers' compensation claim proceeded to hearing.¹ Respondent did not dispute accident or causal connection. On March 16, 2009, the Arbitrator issued a decision awarding medical expenses, and permanent partial disability benefits representing a 7.5% loss of use of the person as a whole. On February 10, 2010, the Commission issued a decision affirming and adopting the Decision of the Arbitrator. *McGlennon v. City of Springfield, CWLP*, Ill. Workers' Comp. Comm'n, No. 03 WC 62004, 10 IWCC 0093 (Feb. 1, 2010).

On August 31, 2010, Petitioner filed a Section 19(h)/8(a) petition seeking additional medical expenses for treatment incurred after the arbitration hearing date. On June 23, 2011, the matter was heard by the Commission. On March 29, 2012, the Commission entered a decision

¹ This case was originally consolidated with Petitioner's claim in 03 WC 62079, which involved an October 28, 2003, cervical injury which is not at issue here.

and order granting Petitioner's Section 8(a) petition, awarding Petitioner's subsequent medical bills and lumbar surgery recommended by Dr. Terence Pencek.

On December 3, 2013, Petitioner filed the current Section 19(h)/8(a) petition seeking additional medical expenses for treatment incurred subsequent to the prior Section 8(a) hearing held in June 2011 as well as increased permanent partial disability. This matter was ultimately presented for hearing by the parties on September 25, 2025, and proofs were closed on November 21, 2025.

II. FINDINGS OF FACT

A. Testimony

Petitioner testified that he had been diagnosed with early Alzheimer's disease but would testify to the best of his recollection. Tr. 19-10. He stated that after June 23, 2011 (the hearing date of his prior petition), he still had constant pain and instability in his left knee. Tr. 20. In addition, he testified that he continued to have low back problems. Tr. 20-21. Petitioner testified that he was referred to Dr. Streng, who performed a lumbar surgery on November 2, 2011. Tr. 21-22. According to Petitioner, he initially received some relief from that surgery, but his low back started giving him problems again not too long afterward. Tr. 22.

Petitioner also testified that he underwent injections to treat his continuing left knee pain. Tr. 23-24. He stated that in November 2012, he saw Dr. Kern regarding his left knee. Tr. 24. He stated that he attempted to get authorization from Respondent for knee surgery while treating at Murray Medical Associates and Murray Calloway Hospital. Tr. 25-26. He added that there were occasions where the Veterans' Administration would authorize treatment or diagnostic studies which were conducted at Murray Calloway Hospital. Tr. 26.

Petitioner testified that on February 28, 2017, he underwent left knee surgery performed by Dr. Morgan at Murray Orthopedics. Tr. 27. He stated that after the surgery, he continued to have some pain, but then it "disintegrated," and he suffered an infection. Tr. 27. According to Petitioner, his knee infection was treated at Lourdes Hospital for approximately one month. Tr. 28.

Petitioner further testified that he received treatment for his low back and knee approximately monthly at a pain management clinic through Dr. Manchikanti. Tr. 29.

Petitioner additionally testified that on December 31, 2021, he began treating with Dr. Babat, who performed a revision fusion surgery. Tr. 31. He stated that he also suffered an infection following this surgery. Tr. 31. He stated that On October 7, 2022, Dr. Babat performed another surgery to treat the infection. Tr. 32.

Regarding his current condition, Petitioner testified that he continued to have low back pain 24/7, for which he took several medications, including Percocet. Tr. 32-33. Regarding the left knee, Petitioner stated that he had to be careful because his knee would give out and he had fallen at home. He stated that his physicians continued to send him to therapy and the pain clinic.

Tr. 34. Petitioner testified that since June 23, 2011, he has had to stay around the house because he could not walk far and his feet were “dead.” Tr. 35. He stated that he was unable to drive and that his wife provided most of his transportation. Tr. 32. He also stated that his wife had been taking care of his medical concerns and appointments for the past several years. Tr. 33.

On cross-examination, Petitioner agreed that he had prior back injuries in March 1998, April 1998, and October 2010. Tr. 36. He also agreed that a little over a month after his September 18, 2003, accident he injured his neck. Tr. 37. He stated that he retired from Respondent as of March 31, 2004. Tr. 36. He testified that he moved to Kentucky in approximately May 2004 and had not been involved in any self-employment. Tr. 39. He agreed that when he last saw Dr. Babat on December 20, 2022, he reported that his preoperative symptoms had resolved. Tr. 39.

Anna McGlennon, Petitioner’s wife, testified that Petitioner’s memory had been “pretty decent” until his 2017 knee surgery and the subsequent infection affected his mind, liver, and kidneys. Tr. 41. According to her, Petitioner had difficulty remembering things prior to his early Alzheimer’s diagnosis. Tr. 41. Ms. McGlennon testified that Petitioner did well for a few years after the 2011 back surgery before Petitioner began to complain of constant low back pain, ultimately leading to a referral to another neurosurgeon. Tr. 41-42. She did not know of any new injuries to Petitioner’s back during that period. Tr. 42.

Ms. McGlennon also testified that after Petitioner’s 2017 knee surgery, he had a staph infection which turned into MRSA, requiring daily IVs and additional treatment by Dr. O’Dell, Petitioner’s PCP. Tr. 44. She stated that she was advised by Dr. O’Dell to take Petitioner to Lourdes Hospital for treatment by an infectious disease doctor named Dr. Labuhn. Tr. 45. She also stated that while he was hospitalized, Petitioner did not recognize her or their children, but his memory began to return a few days before his discharge, though it never returned in full. Tr. 46. She testified that Petitioner did not do well upon release from Lourdes Hospital, requiring outpatient rehabilitation. Tr. 45. According to Ms. McGlennon, Petitioner still did not walk quite right and had a limp. Tr. 45-46. She stated that Petitioner took two medications to help his memory and slow the progression of the Alzheimer’s disease. Tr. 46-47. She also stated that Petitioner took Percocet and Gabapentin to help with his low back and knee pain. Tr. 47.

Ms. McGlennon further testified that Dr. Babat performed another back surgery, removing the old hardware and replacing it with a sort of cage, in addition with fusion in a couple of places that helped a lot with the back pain. Tr. 48. She stated that Petitioner had to have another surgery to address infection, adding that anytime someone has a staph infection or MRSA, it remains in the body and is a risk to return after subsequent surgeries. Tr. 49. She also stated that Petitioner was engaged in physical therapy which helped his condition. Tr. 49-50. Ms. McGlennon testified that she did not know of Petitioner suffering any new injury to his low back or left knee since June 23, 2011. Tr. 51.

B. Relevant Medical Records Regarding Treatment Incurred Prior to the Current Petition

Both parties submitted selected medical records regarding Petitioner’s treatment prior to the current petition which provide background.

On April 28, 1999, Dr. Terence Pencek performed a right L4-L5 laminectomy and discectomy. RX3(1057-1058).

On February 11, 2002, Dr. Pencek performed an L4 laminectomy, L4-L5 discectomy, L4-S1 posterior instrumentation with pedicle screw fixation, L4-S1 posterolateral fusion, and L4-L5 interbody fusion using a titanium cage. RX2(1053-1055).

On March 19, 2003, Dr. Pencek released Petitioner to work with a permanent 50-pound lifting restriction. RX4(1060).

On October 30, 2008, and November 3, 2008, Petitioner saw Dr. B. Martin Fulbright, who administered injections to the right and left knees to treat bilateral knee pain and possible meniscus tears. Dr. Fulbright noted that Petitioner might require arthroscopy later if the injections were unsuccessful. PX6(301-302).

On June 25, 2010, Petitioner saw Dr. Pencek for low back pain radiating to the anterior parts of his legs. Petitioner also reported that his legs became weak when he walked. Dr. Pencek noted that Petitioner developed Parkinson's disease four years prior. Following an examination and review of an MRI, Dr. Pencek diagnosed L3 and L4 lumbar stenosis. He also opined that the Parkinson's disease may be the main cause of Petitioner's slow mobility rather than the stenosis. RX9(1077-1078).

On September 7, 2010, Petitioner returned to Dr. Pencek, who offered an L3-L4 laminectomy and posterolateral un-instrumented fusion, to which Petitioner agreed. RX9(1079).

C. Medical Records Relevant to the Current Section 8(a)/19h Petition for Treatment Incurred Subsequent to June 2011

On July 28, 2011, Petitioner saw Dr. K. Brandon Strenge at the Orthopaedic Institute of Western Kentucky, complaining of increasing back pain and bilateral leg radiculopathy. Following an examination and review of imaging, Dr. Strenge recommended an anterior lumbar interbody fusion with lateral plate fixation through a left-sided approach at L3-L4. Dr. Strenge also noted that if Petitioner failed to improve after that surgery, they could proceed to a more standard posterior procedure involving a removal of instrumentation from L4-S1 and a laminectomy decompression and posterior fusion at L3-L4, possibly with a revision fusion at L5-S1. PX3(254-256).

On November 2, 2011, Dr. Strenge performed the surgery at Western Baptist Hospital, including: (1) a left-sided anterior retroperitoneal approach to the spine at L3-L4; (2) anterior lumbar interbody fusion at L3-L4; (3) anterior spinal instrumentation at L3-L4; (4) use of a PEEK interbody mechanical device for fusion at L3-L4; and (5) use of an allograft bone matrix for fusion at L3-L4. The post-operative diagnoses included adjacent level DDD at L3-L4 and central and bilateral foraminal stenosis at L3-L4. PX3(257-260). On November 5, 2011, Petitioner was discharged from the hospital. PX3(261-262).

On November 22, 2011, December 22, 2011, and February 2, 2012, Petitioner followed up with Dr. Streng, reporting much less discomfort than his preoperative state. PX3(263-266, 269-270). Petitioner also underwent physical therapy. PX3(266-268). However, by September 4, 2012, Petitioner was reporting and receiving injections for trochanteric bursitis. Dr. Streng ordered additional physical therapy. PX3(277-278).

On September 25, 2012, Petitioner saw Dr. Letitia Allen at Murray Calloway County Hospital, complaining of left knee pain. Petitioner also reported that he was making progress on his back with physical therapy. Dr. Allen administered an injection to the left knee. PX12(501-504).

On November 26, 2012, Petitioner presented to Dr. Brian Kern at the Orthopaedic Institute of Western Kentucky for an evaluation of his left knee pain. Following an examination, Dr. Kern noted that Petitioner had failed conservative treatment including injections and recommended a left knee MRI to evaluate medial compartment. PX4(288-289). On December 5, 2012, Petitioner underwent the left knee MRI, which was interpreted as showing: (1) severe chondrosis involving the patellofemoral joint space with associated spurring; (2) degenerative change of the medial and lateral compartments; (3) meniscal degeneration but no definite meniscal tear; (4) a small rounded area of low signal adjacent to the anterior horn of the lateral meniscus, possibly a loose body; and (5) a small joint effusion. PX4(290-291). On December 19, 2012, Dr. Kern reviewed the MRI results and recommended a diagnostic arthroscopy with possible removal of the loose fragment and chondroplasty of the patellofemoral joint and medial and lateral femoral condyles. PX4(292-293).

On March 21, 2014, Dr. Kern wrote a letter to Petitioner's counsel stating the surgery he recommended had not been approved. Dr. Kern also opined that the September 18, 2003, accident led to Petitioner's knee pain and disability. PX5(296-297).

On December 10, 2015, Petitioner presented to Dr. Laxmaiah Manchikanti at the Pain Management Center of Paducah on referral by Dr. O'Dell for treatment of multiple pain problems, including low back pain, neck pain, and bilateral knee pain. Following an examination, Petitioner's pre-existing drug therapy was continued, with psychotherapy addressed through the VA, and no injections due to petitioner's refusal to undergo interventional techniques. The initial duration of treatment would be over one year. Controlled substance management was also discussed. Petitioner was prescribed Norco. PX15(674-683).²

On March 24, 2016, Petitioner underwent a left knee MRI at Murray Calloway County Hospital, which was read as showing osteoarthritis involving all three knee compartments and a tear of the posterior horn of the medial meniscus. PX11(464).

² Thereafter, Petitioner followed up approximately bimonthly with Dr. Manchikanti's office through February 8, 2017. His prescription was briefly changed to MS Contin but then reverted to Norco. Petitioner resumed approximately bimonthly visits from August 29, 2017, through April 13, 2020, when Petitioner began telephone contacts due to the outbreak of the COVID-19 pandemic. Petitioner resumed regular in-person visits on February 5, 2021, reporting a 50-70% improvement since his initial visit. Petitioner continued bimonthly visits through November 24, 2021. Petitioner resumed his visits from March 1, 2022, through August 22, 2022, and again from January 13, 2023, through June 6, 2023. PX15(684-942).

On February 20, 2017, Petitioner underwent left knee surgery by Dr. Derek Morgan of Murray Orthopaedics. PX10 (429). An undated operative note describes a partial medial meniscectomy with a post-operative diagnosis of left knee arthritis and medial meniscus tear with full thickness cartilage loss on the medial femoral condyle and the lateral tibial plateau. PX9(422).

On March 10, 2017, and March 24, 2017, Dr. Morgan performed two left knee arthrotomies with irrigation and excisional debridement to treat infection of the knee. PX9(424-425). Contemporaneous treatment notes indicate an MRSA infection. PX10(449).

By April 20, 2017, Petitioner reported that he was doing well on IV antibiotics and vancomycin, though he continued to use a walker. PX10(454-457). On April 21, 2017, May 26, 2017, and May 30, 2017, Petitioner followed up at Murray Medical Associates after the left knee surgery and subsequent infection. Petitioner ultimately reported a change in his mental status and a cough. He requested that he be admitted to Lourdes Hospital. PX8(318-332).

On May 2, 2017, Petitioner had an infectious disease consultation with Dr. Carl Lebuhn, whose impression was of a recent left knee infection following arthroscopy with MRSA. Dr. Lebuhn recommended four to six weeks of antibiotic treatment. PX11(470-472). On May 17, 2017, Dr. Lebuhn listed a diagnosis of DRESS syndrome and treated Petitioner's allergic reaction to vancomycin. PX12(528). On June 15, 2017, Dr. Lebuhn continued to treat Petitioner's reaction with prednisone. PX12(531-532). On July 3, 2017, Petitioner followed up with Dr. Lebuhn, who was unsure at that point whether Petitioner had DRESS syndrome or more of a hypereosinophilic syndrome or some other liver abnormality. Petitioner reported hallucinations. Dr. Lebuhn advised hospitalization at that time. PX11(473-475). On July 21, 2017, Dr. Lebuhn's impression was of possible psychiatric illness or a medication effect but doubting an infectious etiology. PX11(477-478). On August 1, 2017, Dr. Lebuhn extended the treatment of Petitioner's reaction to vancomycin. PX12(529-530). On August 22, 2017, Petitioner reported doing better since being admitted to Lourdes Hospital. Dr. Lebuhn opined that Petitioner's mental status changes were probably multifactorial. PX12(535-536).

On August 25, 2017, Petitioner returned to Murray Medical Associates, where Dr. Nicholas O'Dell noted Petitioner's treatment at Lourdes Hospital for hallucinations and diagnosis of DRESS syndrome. He was referred to Barnes Hospital for a second opinion at Petitioner's family's request. PX8(333-347).

On August 21, 2019, Petitioner presented at the Mayfield Clinic, an urgent care unit, for complaints of low back pain radiating into the left leg. He was provided a Medrol Dosepak and advised to continue his medication. PX12(554-559).

On September 24, 2019, Petitioner underwent another lumbar MRI at Murray Calloway County Hospital, which was read as showing: post-operative changes at L3-S1; degenerative changes producing moderate central canal stenosis at L2-L3 and mild central stenosis at L3-L4; and mild left neuroforaminal narrowing at L2-L3 and mild bilateral neuroforaminal narrowing at L3-L4. PX12(549).

On June 4, 2020, Petitioner returned to Murray Medical Associates, complaining of acute back pain. He reported undergoing a lumbar MRI before the COVID-19 pandemic started and being told he would need a neurosurgeon. He was diagnosed with low back pain and morbid obesity. He was prescribed Phentermine for weight loss. PX8(389-393).

On March 23, 2021, Petitioner returned to Murray Medical Associates, complaining of bilateral leg pain developing over the prior two months. Petitioner reported that he was unable to walk from his house to his garage. He also reported that he planned to see a neurosurgeon in Nashville. He was informed that he would need to provide his workers' compensation information prior to scheduling an MRI. PX8(394-399). By May 13, 2021, Petitioner provided the information, and the lumbar MRI was ordered. PX8(400-405). On May 21, 2021, Petitioner underwent a lumbar MRI at Murray Medical Associates, which was read as showing spinal stenosis at L2-L3 and L3-L4. PX8(311). On October 4, 2021, Petitioner was referred to another neurosurgeon. PX8(406-411).

On November 24, 2021, Petitioner told the pain management clinic that he saw a neurosurgeon at Mercy Health who did not recommend surgery. Petitioner planned to seek a second opinion because he wanted the lumbar surgery. PX14(874-881).

On December 31, 2021, Petitioner presented to Dr. L. Brett Babat at Nashville Neurosurgery Associates on referral by the VA. Petitioner brought his most recent lumbar MRI for review. Petitioner reported that his symptoms started when he got his foot stuck in a hole in 2002. Petitioner also reported that he had lumbar spine surgery in 2007 at "Baptist" in Paducah, Kentucky that worsened his symptoms. Following an examination, Dr. Babat diagnosed spinal stenosis even at the levels where Petitioner was fused. He also noted that Petitioner was never decompressed. Dr. Babat recommended revision surgery including fusion at L2-S1, everybody [sic] support at L2-L3 and L5-S1, an iliac instrument, and decompression at L2 and L3. PX13(561-562).

On August 23, 2022, Petitioner was fit for an LSO brace in advance of surgery. PX13(565-566).

On August 29, 2022, Dr. Babat performed: L2 and L3 posterior osteotomies; L4 bilateral revision decompressions; L2-L3 and L5-S1 transforaminal lumbar interbody fusions with anterior interbody device application at both levels; segmental instrumentation at L2, L3, L4, and L5, as well as bilateral iliac instrumentation. PX13(589-591).

On September 22, 2022, Petitioner began post-operative follow-up with Dr. Babat. PX13(569-570).

On October 5, 2022, Petitioner returned to Murray Medical Associates, concerned about a post-surgical infection. An examination disclosed that the incision at the midline back had slightly opened, with purulent discharge and pain to palpation. Petitioner was told to return to Nashville for further surgical treatment. PX8(412-417).

On October 6, 2022, Petitioner returned to Dr. Babat, who advised that Petitioner would be admitted to Centennial Medical Center directly for lumbar irrigation and debridement surgery the following day. PX13(573-574).

On October 7, 2022, Dr. Babat performed an excisional debridement of the lumbar wound, including excision of subcutaneous tissue, muscle, and fascia. PX13(595-596). On October 13, 2022, Petitioner was discharged from the medical center. PX13(604).

On October 20, 2022, November 11, 2020, November 17, 2020, and December 8, 2022, Petitioner followed up with Dr. Babat, who also noted a postlaminectomy syndrome. Petitioner reported that his preoperative symptoms had resolved. PX13(577-578, 581-584). On December 22, 2022, Petitioner returned for wound care with a larger pocket of granulation tissue. Dr. Babat was able to clean out the incision area with gauze and use a silver nitrate stick until visible blood vessels were no longer present. PX13(585-586).

Petitioner also submitted an undated letter from Dr. Babat to Petitioner's counsel. In the letter, Dr. Babat wrote that he did not believe that Petitioner's injury was work-related and that he no longer handled workers' compensation cases. However, he also wrote that he understood that Petitioner's 2007 surgery was related to the 2003 accident and that if this was the case, Petitioner's L5-S1 pseudarthrosis was related to that surgery, as was the need for the L5-S1 revision surgery he performed. Other than that portion of the procedure, Dr. Babat could not relate the problem he treated to a work injury, finding the pathology consistent with degenerative changes that we see in people. Dr. Babat was also unable to relate Petitioner's ongoing pain to the 2003 injury. PX14(672).

D. Deposition Testimony by Dr. Brian Kern

On December 1, 2015, Dr. Kern, a board-certified orthopedic surgeon, testified by deposition for Petitioner. PX17(962-1008)(6). He did not have an independent recollection of his treatment of Petitioner and testified based on his office notes. (7-8). He opined that the loose body or meniscal tear in Petitioner's left knee could have been caused by the September 18, 2003, accident. (18). He also opined that even if Petitioner already had those conditions, they were exacerbated his symptoms. (18). He further opined that the accident could have aggravated or accelerated Petitioner's degenerative condition. (18). Dr. Kern could not opine on whether he would still recommend an arthroscopy without re-evaluating Petitioner's current condition. (19). He opined that his charges had been reasonable and necessary. (20).

On cross-examination, Dr. Kern acknowledged that Petitioner had initially been seen by his assistant and that he reviewed the findings after the fact. (22-23). He also acknowledged that he had not reviewed Petitioner's prior medical records. (24). He also had not reviewed records from his partner, Dr. Streng. (29). He agreed that Petitioner's knee arthritis was not uncommon for a man of his age. (26). He could not say whether the loose body likely occurred after 2003. (32). He agreed that when he wrote the March 21, 2014 letter, he did not have knowledge of Petitioner's condition since December 2012. (36). Dr. Kern testified that when he opined that the accident may have caused or aggravated Petitioner's condition, it was not his strongest opinion and more speculation, conjecture, or guesswork. (40).

III. CONCLUSIONS OF LAW

Petitioner seeks additional compensation for unpaid medical expenses incurred in the treatment of his lumbar spine and left knee after June 23, 2011, the hearing date for the prior Section 19(h)/8(a) petition. Petitioner also requests an increase in permanent partial disability above the 7.5% man as a whole award received from the Arbitrator in the original 2009 decision. The Commission considers Petitioner's claims in turn.

A. *Section 8(a)*

Under Section 8(a) of the Act, an employer is required to "provide and pay *** for all 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) (West 2024). To be entitled to additional compensation under Section 8(a), the claimant must initially establish, by a preponderance of the evidence, some causal relationship between his or her employment and the condition of ill-being for which he or she seeks additional benefits. See *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989).

In this case, Respondent stipulated during the initial arbitration hearing that there was a causal connection between Petitioner's September 18, 2003, work accident and his condition of ill-being in his back, hips and left knee. CX3(1086, 1088). Beyond this stipulation, Decision of the Arbitrator, as affirmed and adopted by the Commission, discussed the factual basis for finding a causal connection regarding the lumbar spine in particular, including: the electrodiagnostic studies indicating a left L4 radiculopathy; a lumbar CT scan indicating a moderate disc bulge at L2-L3 and a moderate-to-large disc bulge at L3-L4; a 2008 MRI indicating disc bulging and spinal stenosis at L3-L4; and Petitioner's testimony that Dr. Pencek had indicated that Petitioner could need further lumbar surgery.

The Commission's March 29, 2012, Decision and Order on Petitioner's prior Section 19(h)/8(a) petition found that Petitioner proved an ongoing causal connection to his current state of ill-being. The Commission preferred the opinion of the treating physician, Dr. Pencek, over that of Respondent's examiner, Dr. Robson. The Commission also observed that in many cases, more stress is placed on adjacent levels after a fusion surgery, often leading to deterioration and the potential for an extension of the original fusion. The Commission's decision referred generally to Dr. Pencek recommending surgery at L3-L4 but also referred to Petitioner's testimony that the recommendation occurred on September 7, 2010. The treatment notes for that date, included in the current record, refers to an L3-L4 laminectomy and posterolateral un-instrumented fusion. The Commission, in granting the prior petition, ordered Respondent to authorize and pay for the proposed medical treatment, after observing that Petitioner could file another petition should he find a surgeon to perform the surgery.

The record in this proceeding establishes that on July 28, 2011, shortly after the prior hearing, Petitioner saw Dr. Strenge, who recommended an anterior lumbar interbody fusion with lateral plate fixation through a left-sided approach at L3-L4. Dr. Strenge also noted that if Petitioner failed to improve after that surgery, they could proceed to a more standard posterior

procedure including the laminectomy decompression and posterior fusion at L3-L4 recommended by Dr. Pencek, possibly with a revision fusion at L5-S1. On November 2, 2011, Dr. Streng performed the surgery at Western Baptist Hospital. Although this surgery was not the exact surgery recommended by Dr. Pencek, it was a fusion surgery at L3-L4 which Dr. Streng apparently believed might alleviate the need for the more extensive procedures. Accordingly, Dr. Streng's surgery was of the type the Commission found causally connected to Petitioner's employment in the prior Section 19(h)/8(a) proceedings. Moreover, Petitioner's medical records documented his back injuries and pain, and the medical procedures that his doctors believed were necessary and appropriate to treat them, while Respondent presented no evidence suggesting that the surgery and subsequent associated treatment was not necessary to cure or relieve the effects of Petitioner's injury. Accordingly, Petitioner proved that he is entitled to his medical expenses and associated care. See *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 51.

However, Petitioner testified that after receiving some relief from that surgery, his low back started giving him problems again not too long afterward. The treatment records indicate that by September 4, 2012, Petitioner was reporting and receiving injections for trochanteric bursitis. Petitioner received treatment for his left knee, which is discussed further below, but surgery was not approved for years and on December 10, 2015, Petitioner began a lengthy course of pain management with Dr. Manchikanti which focused primarily on lumbar and cervical pain.

During this course of pain management, on August 21, 2019, Petitioner presented at the Mayfield Clinic, for complaints of low back pain radiating into the left leg. On June 4, 2020, Petitioner reported undergoing a lumbar MRI before the COVID-19 pandemic started and being told he would need a neurosurgeon. On May 21, 2021, Petitioner underwent a lumbar MRI which was read as showing spinal stenosis at L2-L3 and L3-L4. On October 4, 2021, Petitioner was referred to another neurosurgeon. On November 24, 2021, Petitioner reported that he saw a neurosurgeon who did not recommend surgery.

Petitioner sought a second opinion from Dr. Babat, who ultimately recommended and performed: L2 and L3 posterior osteotomies; L4 bilateral revision decompressions; L2-L3 and L5-S1 transforaminal lumbar interbody fusions with anterior interbody device application at both levels; segmental instrumentation at L2, L3, L4, and L5, as well as bilateral iliac instrumentation. Dr. Babat opined that he did not believe that Petitioner's injury was work-related, but that if Petitioner's 2007 surgery was related to the 2003 accident, Petitioner's L5-S1 pseudarthrosis was related to that surgery, as was the need for the L5-S1 revision surgery he performed. The Commission observes that Petitioner did not undergo lumbar surgery in 2007. According to the treatment notes, Petitioner reported to Dr. Babat that he had lumbar spine surgery in 2007 at "Baptist" in Paducah, Kentucky that worsened his symptoms. The Commission infers that Petitioner either misreported or Dr. Babat misheard Petitioner referring to the 2011 lumbar surgery performed by Dr. Streng, which was performed at Western Baptist Hospital.

Respondent asserts that Dr. Babat's causation opinion relates to the 2002 surgery at L5-S1, predating the work accident. The Commission places little weight on Dr. Babat's opinions, given his apparent confusion between the 2002 surgery and the 2011 surgery by Dr. Streng, which Petitioner had reported worsened his condition. In addition, the treatment records indicate that

Dr. Babat's revision surgery was not limited to the L5-S1 level and included procedures at the L3 and L4 levels previously addressed by Dr. Streng's surgery. Accordingly, based on the treatment records showing continual treatment for lumbar spine pain, the Commission concludes that the treatment Petitioner received for his lumbar spine after the 2011 surgery, including the surgery performed by Dr. Babat and his follow-up care, continued to be causally connected to Petitioner's work accident.

Regarding Petitioner's left knee, the record indicates that on October 30, 2008, and November 3, 2008, Dr. Fulbright administered injections to the right and left knees to treat bilateral knee pain and possible meniscus tears, noting that Petitioner might require arthroscopy later if the injections were unsuccessful. As mentioned above, at the initial arbitration hearing, Respondent stipulated to a causal connection between the work accident and the condition of ill-being of Petitioner's left knee. In addition, there is no evidence that Petitioner suffered any other knee injury after the work accident.

On September 25, 2012, shortly after Petitioner's last post-operative follow-up visit with Dr. Streng, Dr. Allen administered an injection to the left knee. On November 26, 2012, Petitioner was evaluated by Dr. Kern. On December 19, 2012, Dr. Kern recommended a diagnostic arthroscopy with possible removal of a loose fragment and chondroplasty of the patellofemoral joint and medial and lateral femoral condyles. However, the surgery was not approved for years. On February 20, 2017, after reviewing a new left knee MRI, Dr. Morgan performed a partial medial meniscectomy with a post-operative diagnosis of left knee arthritis and medial meniscus tear with full thickness cartilage loss on the medial femoral condyle and the lateral tibial plateau. The meniscal tear is significant because Dr. Kern did not find a definite meniscal tear, though other doctors did prior to being confirmed during surgery. On March 10, 2017, and March 24, 2017, Dr. Morgan performed two left knee arthrotomies with irrigation and excisional debridement to treat infection of the knee. Petitioner then treated for the infection, DRESS syndrome, and associated hallucinations and delirium through August 25, 2017. Regarding his current condition, Petitioner testified that he had to be careful because his knee would give out and he had fallen at home. According to Ms. McGlennon, Petitioner still did not walk quite right and had a limp. She also stated that Petitioner took Percocet and Gabapentin to help with his low back and knee pain.

On March 21, 2014, Dr. Kern opined that the September 18, 2003, accident led to Petitioner's knee pain and disability. On December 1, 2015, he testified similarly, but agreed on cross-examination that when he opined that the accident may have caused or aggravated Petitioner's condition, it was not his strongest opinion and more speculation, conjecture, or guesswork. The Commission reiterates that Respondent stipulated to this causal connection at the initial arbitration hearing. Accordingly, the issue is whether the causal connection is ongoing. Given the operative note confirming the medial meniscal tear and the lack of evidence suggesting that the causal condition had terminated, the Commission concludes that Petitioner is entitled to his reasonable and necessary medical expenses for the treatment of his left knee and associated post-operative care.

B. Section 19(h)

Section 19(h) of the Act seeks to redress changes in circumstances after the entry of an award and is particularly remedial in nature. It should be construed liberally to allow review of alleged changes in circumstances. *Hardin Sign Co. v. Industrial Comm'n*, 154 Ill. App. 3d 386, 389-90 (1987). To obtain an increase in the permanent partial disability award under section 19(h), the Petitioner must show that his disability at the time of his initial arbitration hearing has materially increased. *Motor Wheel Corp. v. Industrial Comm'n*, 75 Ill. 2d 230, 236 (1979); *Gay v. Industrial Comm'n*, 178 Ill. App 3d 129, 132 (1989).

In this case, Petitioner's original claim was arbitrated in 2009. Since this was before September 1, 2011, the five permanent partial disability factors now set forth in section 8.1b of the Act do not apply and the Commission is not required to address those factors. See 820 ILCS 305/8.1b (West 2024). As noted above, following the initial 2009 arbitration, Petitioner was awarded permanent partial disability benefits representing a 7.5% loss of use of the person as a whole. Since the initial award, Petitioner underwent lumbar surgery by Dr. Strenge in November 2011, which provided only temporary relief and resulted in pain management and referral to a neurosurgeon. Petitioner ultimately underwent a revision surgery in August 2022, including L2 and L3 posterior osteotomies; L4 bilateral revision decompressions; L2-L3 and L5-S1 transforaminal lumbar interbody fusions with anterior interbody device application at both levels; segmental instrumentation at L2, L3, L4, and L5, as well as bilateral iliac instrumentation. Petitioner suffered an infection following this surgery, requiring another surgery by Dr. Babat in October 2022. Petitioner and his wife testified without rebuttal that Petitioner continues to have low back pain 24/7, for which he takes several medications, including Percocet and Gabapentin.

Between these lumbar surgeries, Petitioner also underwent injections and pain management to treat his continuing left knee pain, attempting to get authorization for surgery. In February 2017, Petitioner finally underwent a partial medial meniscectomy. In March 2017, Petitioner required two left knee arthrotomies with irrigation and excisional debridement to treat infection of the knee, apparently an MRSA infection, which required hospital treatment for a month. The treatment records also indicate DRESS syndrome and hallucinations. After the surgery, Petitioner continued to have some pain, and then it "disintegrated." Petitioner's wife testified that Petitioner did not do well upon release from Lourdes Hospital, requiring outpatient rehabilitation. Petitioner's knee gives out and he has experienced falls at home, leaving him essentially homebound, with his wife managing his transportation and medical matters for the past several years.

Given the increases in Petitioner's disabilities amply supported by the hearing testimony and buttressed by the treatment records submitted into evidence, the Commission concludes that Petitioner's permanent partial disability award should be increased to represent an additional 40% loss of use of the person as a whole for the current condition of both the lumbar spine and left leg.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Section 8(a) petition is granted. Petitioner is awarded his reasonable and necessary medical expenses for the period from June 23, 2011, through November 21, 2025, as set forth in Petitioner's Exhibit 2, pursuant to Sections 8 and 8.2 of the Act. The Commission also awards Respondent a \$8,612.17

credit under Section 8(j) of the Act, pursuant to the stipulation of the parties. (Tr. 11/21/25, CX3(10)).

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's Section 19(h) petition is granted. Respondent is ordered to pay Petitioner sum of \$550.47 per week for a period of 200 weeks for the reason that Petitioner sustained a material increase in his disability to the extent of a 40% loss of use of the person as a whole under Section 8(d)(2) of the Act. This award is in addition to the 37.5 weeks awarded in the initial arbitration.

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), 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.

February 6, 2026

r: 02/02/26

CMD/kcb

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/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	23WC000554
Case Name	Bradley Vaughn v. City of Peoria Heights
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0040
Number of Pages of Decision	35
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Jim Magiera

DATE FILED: 2/10/2026

DISSENT

/s/Frank Soto, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRADLEY VAUGHN,
 Petitioner,

vs.

NO: 23WC000554

CITY OF PEORIA HEIGHTS,
 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 accident, causal connection, medical benefits, TTD benefits, and nature & 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 9, 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.

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

FEBRUARY 10 2026

O: 1/28/26

FJS/afr

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/s/ Carolyn M. Doherty
Carolyn M. Doherty

/s/ Raychel A. Wesley
Raychel A. Wesley

DISSENT

I respectfully dissent from the Decision of the majority and would instead modify the Arbitrator's Decision in part, specifically exchanging reliance upon the opinions of Dr. Fletcher for those of Dr. Fintel, which are supported by the findings of Petitioner's treating cardiologists. In so doing, I would find that Petitioner failed to prove entitlement to TTD and medical benefits beyond May 16, 2023 and failed to prove a loss-of-trade degree of permanency.

I am persuaded by the more focused opinions of Dr. Fintel regarding the physical and operational state of Petitioner's heart both before and after the injury of December 14, 2022, as well as Dr. Fintel's superior expertise and experience as a cardiologist. I am further persuaded by the records of Petitioner's two ongoing treating cardiologists, Dr. Chaturvedula and Dr. Mina, which apart from the most immediate post-injury visits make neither references nor changes in treatment relating to the injury, make no findings that Petitioner's work incident caused, aggravated, or accelerated any damage to his heart, and make no findings that Petitioner could not return to work as a police officer. Finally, I note concessions implicit in Dr. Fletcher's stated reasoning which logically support Dr. Fintel's findings rather than rebutting them.

Certain facts critical to this analysis are not in dispute: 1) Petitioner had a pre-existing heart condition for which an aortal valve replacement and then pacemaker were implanted in November 2021; 2) he was back to performing his full work duties as a police officer in the months leading up to December 14, 2022; 3) during this time and after he was regularly seeing his cardiologists for treatment of his pre-existing condition and pacemaker upkeep; 4) on December 14, 2022 he was involved in a physical struggle with a student; 5) after the December 14, 2022 incident Petitioner continued to work full duty without seeking medical attention until a previously scheduled visit with Dr. Chaturvedula on January 6, 2023;¹ and 6) all that occurred at the January 6 visit to adjust his pacemaker and enable the "rate responsiveness" setting; and 7) Petitioner's

¹ A visit which was not scheduled due to the 12/14/22 injury but was Petitioner's next regular follow-up appointment with Dr. Chaturvedula, per notation in the 11/8/22 visit note from Dr. Mina. A Carle Health Cardiology note of 1/3/23 contains no mention of the 12/14/22 injury.

treating cardiologists did not take Petitioner off-work until he specifically requested it, and did not opine Petitioner could not return to work as a police officer; instead it was Petitioner's Section 12 examiner, Dr. Fletcher, who opined that Petitioner could not work as a police officer due to his preexisting heart condition.

This case involves assessing the credibility and the facts supporting the opinions of Petitioner's Section 12 examiner, Dr. Fletcher, and Respondent's Section 12 examiner, Dr. Fintel. It is important to note that Petitioner's treating doctors did not provide causation opinions on behalf of Petitioner. Here both parties presented Section 12 opinions. Dr. Fintel, the Section 12 examiner presented by Respondent, is board-certified in the areas of internal medicine, cardiology, and nuclear cardiology. As an attending physician at Northwestern Memorial Hospital, his outpatient practice is for patients with a variety of cardiovascular diseases and his inpatient practice is in the coronary care unit, where he has previously served as Director. He is additionally a Professor of Medicine at Northwestern University Feinberg School of Medicine. Dr. Fletcher, the Section 12 examiner presented by Petitioner, is not a cardiologist but is board-certified in the areas of occupational medicine and preventative medicine. Dr. Fletcher's training in cardiology and related issues is limited, per his testimony, to an annual 2-day seminar for his continuing certification as an FAA medical examiner.

Dr. Fletcher testified that he does not work with pacemakers and would defer to pacemaker experts regarding operation and function of pacemakers. Dr. Fletcher was also unable to provide any opinion regarding physiological changes to Petitioner's heart and heart condition due to the incident. Dr. Fintel is a full-time practicing cardiologist who has extensive experience with pacemakers and opined that the type of exertional event in which Petitioner was involved on December 14, 2022 was transient and did not cause any physical or electrical damage to Petitioner's heart.

This claim involves the complex question of whether Petitioner's undisputed and serious pre-existing heart condition was aggravated or accelerated by the events of December 14, 2022, and in my view, Dr. Fintel's qualifications and experience in the areas of cardiology and appreciating structural changes involving the heart as well as interpreting echocardiography or cardiovascular imaging are superior to those of Dr. Fletcher.

Presentation of opposing expert opinions by the parties does not inherently place those experts on the same level for finders of fact; the specific qualifications of the opining witness must be considered. See, e.g., *Alm v. Loyola Univ. Med. Ctr.*, 373 Ill.App.3d 1 (1st Dist. 2007)(a pathologist was not within his area of expertise sufficient to allow testimony on the post-surgical standard of care for plastic surgery); *McWilliams v. Dettore*, 387 Ill.App.3d 833 (1st Dist. 2009)(oncologist testimony against a board-certified surgeon regarding the need for a biopsy was disallowed as outside his area of expertise, as the oncologist testified his practice was to refer to a surgeon and defer to the surgeon's findings); *Petre v. Cardiovascular Consultants, S.C.*, 373 Ill.App.3d 929 (1st Dist. 2007)(testimony by cardiothoracic surgeon *as defendant* was not competent to establish standard of care for non-physician employee at his own practice). The Commission may make its own findings and arrive at a different conclusion regarding weight afforded to physician witnesses than that reached by the Arbitrator at trial. See, e.g., *Fogarty v. Ill. Workers' Comp. Comm'n*, 2020 IL App (1st) 182719WC-U (1st Dist. 2020)(Rule 23)("It is well-

settled that the Commission, not the arbitrator, determines the credibility of witnesses and assess the weight to be given to the evidence.”)(sic)

In addition to having superior qualifications, experience and training than Dr. Fletcher, the opinions of Dr. Fintel are more persuasive than those of Dr. Fletcher because the opinions of Dr. Fintel are supported by the medical records, diagnostic testing, echocardiography, and cardiovascular imaging and consistent with the medical records of Petitioner’s treating physicians, unlike the opinions of Dr. Fletcher which are based upon speculation, conjecture, and subjective complaints not supported by medical records.

Dr. Fintel, based on review of the pre- and post-injury cardiology records and pacemaker reports, as well as his extensive and specific expertise in the diagnosis and treatment of severe heart conditions, opined that the events of December 14, 2022 did not cause any aggravation or acceleration of Petitioner’s pre-existing heart condition, nor cause any structural damage to Petitioner’s heart, nor result in any diminishment of Petitioner’s ability to engage in physical activities, whether work-related or otherwise. Dr. Fintel opined that the event of December 14, 2022, was transient and did not weaken Petitioner’s heart muscle or cause any loss of heart tissue. Dr. Fintel reviewed Petitioner’s September 23, 2022 repeat transthoracic echocardiogram, taken prior to the December 14, 2022 work incident, which showed a decline in the systolic left ventricular dysfunction, leading Petitioner to be placed on various medications for his enlarged heart. Additionally, Dr. Fintel also reviewed Petitioner’s pacemaker data from the date of the incident, which showed no evidence of any arrhythmic event.

Dr. Fletcher opined that the December 14, 2022 injury was “the straw that broke the camel’s back,” but he was unable to opine that the event caused any physiological difference in Petitioner’s heart or heart function. Dr. Fletcher testified that he based his opinions entirely in reliance upon Petitioner’s subjective reports. Petitioner claimed that post-injury he was unable to complete a wide variety of everyday tasks without experiencing extreme and lasting fatigue and shortness of breath, when he had no such issues pre-injury. Petitioner’s subjective complaints are not supported by the medical records which undermine Dr. Fletcher’s opinions.

- Petitioner’s medical records prior to the incident reference episodes of shortness of breath in the context of the bicuspid aortal valve condition, asthma, and dyspnea.
- Petitioner’s September 23, 2022 repeat transthoracic echocardiogram, taken prior to the December 14, 2022 work incident, showed a decline in the systolic left ventricular dysfunction, leading Petitioner to be placed on various medications for his enlarged heart.
- Dr. Mina’s note of 11/8/22, stating “currently asymptomatic and able to do most of activities.”
- RN Medina’s note of 1/3/23, regarding an anticoagulant visit with no reference to the recent injury and no change to the medication regimen.
- Dr. Chaturvedula’s note of 1/6/23, stating “Otherwise, he had not noticed any reduction in his exercise capacity”.
- Dr. Geraghty’s note of 1/23/23, showing “fatigue” and “shortness of breath” marked as “not present.”

- Dr. Fintel’s report of 5/22/23, stating “[Petitioner] denies any exertional symptoms currently but notes that he has not exerted himself to the degree that he previously did, out of fear of exacerbating any underlying cardiac conditions.”
- PA Warnecke’s note of 9/13/23, stating “negative for fatigue, and negative for chest pain, cyanosis, dyspnea on exertion, irregular heartbeat, leg swelling, near-syncope, orthopnea, palpitations, paroxysmal nocturnal dyspnea, and syncope.”
- Dr. Mina’s note of 3/19/24, stating “Patient is active and about with no cardiac complaints.”(emphasis added)

Petitioner’s claim that he cannot complete a variety of everyday tasks without extreme fatigue is inconsistent with these medical notations, as well as the undisputed fact that he continued to perform the full duties of a police officer without seeking medical treatment after the December 14, 2022 incident until he requested that Dr. Mina take him off work on January 10, 2023. While Petitioner may have been avoiding exertion, this was done not out of inability to complete tasks but out of fear due to his preexisting underlying condition. The medical records undermine the opinions of Dr. Fletcher because the records show that Petitioner was experiencing issues with fatigue prior to the December 14, 2022 work incident and, after the December 14, 2022 incident, he was able to perform the same level of activity. Expert testimony shall be weighed like other evidence, with its weight determined by the character, capacity, skill and opportunity for observation, as well as the state of mind of the expert and the nature of the case and its facts. *Madison Mining Company v. Industrial Comm’n*, 309 Ill. 91, 138 N.E. 211 (1923); The proponent of expert testimony must lay a foundation sufficient to establish the reliability of the bases for the expert’s opinion. *Gross v. Illinois Workers’ Compensation Comm’n*, 2011 IL App (4th) 100615WC, 960 N.E.2d 587, 355 Ill. Dec. 705. If the basis of an expert’s opinion is grounded in guess or surmise, it is too speculative to be reliable. Expert opinions must be supported by facts and are only as valid as the facts underlying them. *In re Joseph S.*, 339 Ill. App. 3d. 599, 607, 791 N.E.2d 80, 87, 274 Ill. Dec. 284 (2003).

Petitioner’s medical records are also consistent with the findings and opinions of Dr. Fintel. The post-incident records of Drs. Chaturvedula and Mina only reference Petitioner’s December 14, 2022 incident three times: on January 6 and April 20, 2023 (Dr. Chaturvedula), and January 9, 2023 (Dr. Mina). Those three notations do not contain any changes in Petitioner’s preexisting cardiological treatment regimen following his aortal valve replacement and pacemaker implantation. Approximately 35 other post-injury records, including visits with Dr. Mina, regular pacemaker checks, and weekly anticoagulant² visits, contain no mention of the December 14, 2022 incident nor document any heart muscle damage or loss of heart tissue or any change in Petitioner’s preexisting cardiological treatment caused by the December 14, 2022 incident.

In opining that Petitioner’s treatment regimen changed post-injury, Dr. Fletcher, and thus the majority, relies in part upon Petitioner being prescribed two³ additional medications (Jardiance

² Coumadin, which Petitioner appears to have begun taking on an ongoing basis following the pacemaker implantation in November 2021.

³ Petitioner testified that there was a third such “heart failure medication” prescribed in the wake of the injury, namely “Metoprolol.” The records show that this medication was first prescribed on 11/25/21 following the pacemaker implant and continued uninterrupted through the final record in evidence dated 3/19/24.

and Entresto) after the injury that he had not been prescribed prior. The first mention of these medications is in a medication update dated March 12, 2023, which does not reference the December 14, 2022 injury, and which notes these medications were apparently prescribed on March 8, 2023 by Dr. Marshall, whose full records are not found in evidence. Therefore the majority's belief that the two medications were prescribed due to the December 14, 2022 incident and not part of Petitioner's pre-existing cardiological treatment regimen is speculation and unsupported by the record.

The only objective and documented change to Petitioner's medical treatment following the injury that was specifically stated to be in response to that injury was the pacemaker update to enable the "rate responsiveness" mode at Petitioner's visit with Dr. Chaturvedula on January 6, 2023. Apart from this option change, there is no discernable post-injury difference in the pacemaker check records, and no indication from Dr. Mina that Petitioner's pacemaker has functioned anything other than properly since. Dr. Fintel opined that with the change to Petitioner's pacemaker settings the improved programming would in fact give Petitioner greater strength and endurance in situations requiring physical exertion, which is consistent with the medical records.

Dr. Fletcher's opinions regarding Petitioner returning to baseline and reaching maximum medical improvement indirectly support the opinions of Dr. Fintel. In his report of May 16, 2023, Dr. Fletcher found Petitioner to have "returned to pre-injury baseline with reduced cardiovascular reserve" and to have reached a state of maximum medical improvement from that incident. As noted, there is no objective evidence in the record to corroborate that Petitioner's cardiovascular reserve was reduced. It is important to note that Dr. Fletcher testified he does not work with pacemakers and would defer to pacemaker experts regarding operation and function of pacemakers, and Dr. Fletcher testified that he is unable to provide any opinion regarding physiological changes to Petitioner's heart and heart condition due to the incident. However, while noting Petitioner had returned to his pre-injury baseline and had reached a state of maximum medical improvement relative to that injury, Dr. Fletcher also stated:

"Based on his past history he should have never been hired as a police officer in the first place with his significant heart history since age 13 when he first started having... premature ventricular contractions and was diagnosed with cardiomyopathy. He should have never returned to work as a police office after his cardiac surgery in November 2021."

While perhaps not intending to, by making these findings Dr. Fletcher agrees with Dr. Fintel: the reason Petitioner was unable to return to his full duties as a police officer/school resource officer after the December 14, 2022 injury was not due to any change in that heart condition resulting from the injury, but due to his baseline pre-injury heart condition being incompatible with the physical requirements of the position.

For the foregoing reasons, I respectfully dissent.

/s/ Frank J. Soto
Frank J. Soto

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC000554
Case Name	Bradley Vaughn v. City of Peoria Heights
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	28
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Jim Magiera

DATE FILED: 5/9/2025

/s/Maureen Pulia, Arbitrator

Signature**INTEREST RATE WEEK OF MAY 6 2025 4.09%**

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**

BRADLEY VAUGHN,

Employee/Petitioner

v.

CITY OF PEORIA HEIGHTS,

Employer/Respondent

Case # **23** WC **554**

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 **Peoria**, on **4/14/25**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **12/14/22**, 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 **\$72,000.24**; the average weekly wage was **\$1,384.62**.

On the date of accident, Petitioner was **37** years of age, *married* with **2** dependent children.

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

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

Respondent shall be given a credit of **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$14,623.12** in advanced permanency disability benefits, for a total credit of **\$14,623.12**.

Respondent is entitled to a credit of **\$5,030.46** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$923.08/week for 63-5/7 weeks, commencing 1/6/23 through 3/28/24, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services from 12/14/22 through 4/14/25, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of \$5,030.46 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 permanent partial disability benefits of \$830.77/week for 225 weeks, because the injuries sustained caused the 45% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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



MAY 9 2025

Signature of Arbitrator

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 37 year police officer and school resource officer, alleges he sustained an accidental injury that arose out of and in the course of his employment by respondent on 12/14/22, as the result of an altercation with a student. The issues in dispute are accident, causal connection, medical expenses, temporary total disability and nature and extent of the injury.

Petitioner testified that when he was 13 years old he was diagnosed with PVCs, which he described as a random or irregular heartbeat that would hit every once in a while. He was provided no treatment or medications for this condition. He testified that he was told they would just monitor it. Petitioner testified that he attended high school and played sports. In order to participate in sports he underwent physicals and was never denied the opportunity to play due to any cardiac issues. In high school, petitioner also participated sports without any issues.

After high school petitioner attended Illinois Central College for a year before moving to Western Illinois University where he majored in law enforcement and justice administration. He received his bachelor's degree in 3 ½ years. During his college years he was never under any active care for his cardiac issues, and had no cardiac symptoms, such as fatigue or light headedness.

Prior to working for respondent petitioner worked at WalMart doing security; for The Children's Home as a residential counselor; as a volunteer firefighter for Northern Tazewell Fire Department; and, as an EMT. While performing these jobs petitioner had no restrictions related to any cardiac issues. He also had no cardiac issues, or problems with fatigue or lightheadedness while performing these jobs.

Following these jobs, petitioner was hired as a police officer for the city of Normal, IL. Petitioner went through the police academy for five months and was able to perform all the physical activities required of that training without incident. He testified that he had no difficulties as they related to his heart condition while in the police academy. He denied any fatigue, lightheadedness, or shortness of breath. Petitioner testified that he also passed the fitness for duty examination for a police officer for the City of Normal. Petitioner worked as a police officer with the City of Normal for about 5 ½ years without any difficulties as they relate to his heart. He was able to perform all the duties of a police officer.

In 2008 petitioner was hired by respondent as a police officer. Petitioner testified that he had no issues with his heart at that time. Petitioner performed all the duties of a patrol officer. In 2015 he was given the job of school resource officer. Petitioner testified that when school was not in session he would also perform the duties of a police officer for respondent. While working as a school resource officer, petitioner wore an ear piece where he monitored the police department's radio calls. If there was a dangerous situation where

additional backup was needed, he would be pulled out of the school to respond to the call. Petitioner denied any problems with his heart while working in either of these positions for respondent before 12/14/22.

Petitioner offered into evidence records from Unity Point Health Cardiology and Unity Point Health Morton that go back as far as 7/30/08. On that date, petitioner was cleared by Dr. Marshall to take the physical portion of the police department qualification exam. On 12/29/15 petitioner was treated for an exposure to a natural gas leak. He was released to full duty work on 12/30/15.

On 1/18/21 petitioner presented to Dr. Marshall for medication management. He had no questions or concerns. He reported a history of migraine headaches that he managed with Imitrex. He also reported a history of asthma with no problems as of late. Petitioner did report a history of a bicuspid aortic valve, as well as the degree of aortic regurgitation due to his bicuspid aortic valve. He noted that he had not seen a cardiologist in the last 15 years for this condition, and was told at that time to come back on 10 years. Petitioner asked for a referral to a cardiologist for continued monitoring of this condition. Dr. Marshall's exam of petitioner's heart noted normal rate and regular rhythm. His heart sounds were normal with no murmur, friction rub or gallop. Dr. Marshall ordered an echocardiogram for evaluation of petitioner's bicuspid aortic valve, and referred him to a cardiologist for overdue surveillance of his bicuspid aortic valve.

On 11/18/21 petitioner was admitted to Unity Point Hospital Methodist. Petitioner had been followed for a number of years for a history of bicuspid aortic valve, and eventually developed dilation of the aortic valve and regurgitation of the aortic valve. For this condition, petitioner underwent an aortic valve replacement with modified Bentall procedure performed by Dr. Chaturvedula on 11/18/21. The procedure was complicated by a complete heart block, and petitioner was given a temporary pacemaker, that was replaced by a permanent pacemaker on 11/24/21 by Dr. Seccombe, and managed by Dr. Mina. Petitioner was discharged on 11/25/21. Petitioner followed up with Dr. Chaturvedula, Dr. Mina, and Dr. Marshall.

On 1/18/22 petitioner was released to full duty work as a police officer for respondent. He had no restrictions. Petitioner testified that at that time he had no symptoms that would preclude him from doing his work as a police officer.

On 4/19/22 petitioner followed up at the Pacemaker Clinic. No issues were found with his pacemaker device, and his valve was doing well clinically. Dr. Mina sent petitioner for an echocardiogram to establish post replacement parameters, and referred him back to Dr. Chaturvedula for follow-up relative to the valve.

On 6/28/22 petitioner followed up with Dr. Chaturvedula. Dr. Chaturvedula released petitioner to full unrestricted duty work as a police officer for respondent. Petitioner denied any symptoms at this time.

On 11/8/22 petitioner followed-up with Dr. Mina for his pacemaker visit. He reported no chest pain, palpitation or shortness of breath. He reported that he was active and about, with no cardiac complaints. He reported that he was asymptomatic and able to do most activities. Following the examination, it was determined that the pacemaker was working well and there were no issues with the device. Dr. Mina also noted that the valve was doing well clinically. Dr. Mina continued petitioner's full duty work status.

Petitioner testified that from 1/18/22 through 12/14/22 he was performing the full duties of a police officer for respondent that included responding to emergency calls, and confrontations with a large group of new kids from an opposing school that got into large fights with the other students at the school. There was one fight after 1/18/22 that was a large fight that required a very large police response. Petitioner testified that there were several foot pursuits throughout this time, and it was a regular occurrence to have fights at the school in 2022. Petitioner worked as a school resource officer for both the grade and high school that were right next to each other. Petitioner was back and forth between the schools all day, depending on where he was needed. Petitioner testified that from 1/18/22 through 12/14/22 he was able to engage in all physical activities his job as a police officer required without any cardiac issues, including lightheadedness or fatigue.

On 12/14/22 petitioner was working as a school resource officer for respondent. He was in full uniform and had a squad car. During the day he got a call from the principal, Terry Mooney, that a special education student, 5'8" or 5'9" weighing 150-160 pounds, was having some kind of mental breakdown in the classroom. Mooney requested assistance. At the time, petitioner was not experiencing any fatigue or lightheadedness.

After receiving the call petitioner ran down the hallway to the classroom. The first thing he noticed was that there was furniture everywhere. Full size desks were flipped over, and the room partitions were thrown about. Books were all over the place and the cabinet doors were wide open. The student was in the room, as well as Mooney, a teacher named Bohannon, and an aide named Whalen. They made a perimeter around him in order to contain him. Initially, petitioner verbally engaged the student in an attempt to calm him down, and deescalate the situation. That did not work, and the student tried to run past petitioner and Mooney toward the cabinets that had glass doors. At that point, petitioner grabbed the student and tried to restrain him against the cabinet. The student tried to spin around and hit him, and that is when the petitioner and Mooney took the student to the ground. It took petitioner and Mooney about 2 minutes to get the student into handcuffs, all the while struggling with the student. Petitioner testified that he was the only one there trained on how to put the student in handcuffs.

Once petitioner was able to get the student into handcuffs, they got him up and leaned him against the cabinets. At that point, petitioner was handcuffed, and petitioner had his arm through the student's arms to keep him in control because he was still trying to thrash around and get at the cabinets. As petitioner was standing

there with the student, he had a really hard time catching his breath, and taking deep breaths hurt. He testified that from his knees down, his feet felt like they were on fire, and his legs felt very heavy. Petitioner also noticed that his hands from the tips of his fingers to the middle of his palm had really dark streaks of a purplish-blue color. Petitioner testified that at that time he did not feel good and realized something was going on. Petitioner denied ever experiencing these symptoms before.

Petitioner asked Mooney to hold onto the student and he called for backup. He then returned and grabbed the student again. The student's father then arrived and was afraid his son might do this to his house, so he asked that his son be taken to the hospital. Officer Carrier, as well as the fire department responded. Once the ambulance was ready, Officer Carrier and petitioner escorted the student from the classroom to the ambulance. During the escort, the student continued to resist. He resisted by kicking, screaming or going limp. As a result, petitioner and Officer Carrier had to almost lift him off the ground to transport him to the ambulance.

After the ambulance left with the student petitioner went to his squad car and just sat there. He rolled down his windows in order to get some fresh air and cool off. He tried to focus on deep breathing to slow his heart rate down. He eventually got himself calmed down. Petitioner testified that he also had a tick sound in his ear that he could hear from his mechanical valve. Petitioner testified that prior to this date he never heard the tick from the mechanical valve, nor did he have to calm himself down like he did that day. Given that this incident occurred at the end of his shift, petitioner returned to the station, parked his car, and decided to do his report the next day so he could go home. Petitioner testified that he called Dr. Chaturvedula's office that day, and was told that he was on vacation. Petitioner testified that he reported his symptoms to the nurse and was given an appointment.

Petitioner testified that the symptoms he experienced at the time of the altercation on 12/14/22 never fully went away. He noted that he was able to catch his breath. He also noted that the numbness, tingling, burning, and purple streaks went away. However, some of the symptoms that did not go away was the feeling of exhaustion, which continued after 12/14/22.

Following the incident, petitioner had a week of PTO scheduled for the Christmas holiday that he took.

The records show that on 12/21/22 petitioner phoned Dr. Chaturvedula's office and told them he had an episode on 12/14/22 at 3 pm and wanted to know if they could see anything on his pacemaker at that time. Petitioner reported that he had a pretty brutal fight with a person they were taking into custody. He reported that after the fight occurred he was unable to catch his breath for a while, and it did not feel like after a workout. He just could not genuinely catch his breath. He reported that his fingers turned purple all the way up towards his palms, and his lips were purple when he looked in the mirror. He also reported that from his knees down his

legs felt very tingly like they were asleep. Petitioner was told there were no alerts on his permanent pacemaker, but his tachy tier was set at 188 bpm, so they were unable to know if he was having an event at that time for sure or not. Petitioner reported that he was scheduled to see Dr. Chaturvedula on 1/6/23, and they stated they would still send the information to the provider to see if the tiers needed adjusting or if there were any recommendations in the meantime.

Later that day, Dr. Chaturvedula responded that he was very hopeful, but needed to make sure that the rate responsiveness on the pacemaker was turned on, especially given such an adrenergic rush, it would be important for his pacemaker to ramp up to the rate 30 so as to not feel bad. He was of the opinion that it was not inconceivable that given such a high intense situation, he would feel such symptoms. He noted that if petitioner continued to feel poorly, he would have to worry, but if he felt back to normal and his exercise capacity was back to normal, no further interventions would be necessary. He noted that he would also be worried about petitioner being on an anticoagulation and being involved in such altercations, since that could increase the risk of bleeding/hematoma etc. Dr. Chaturvedula was of the opinion that if petitioner did not feel up to his usual self, he could see him in the clinic upon his return from vacation the first week of January 2023. He stated that in the interim, if things do not progress as expected, he should go to the emergency room.

After his PTO ended petitioner returned to work as a full duty police officer for about three weeks, since the students were not yet back in school. Petitioner testified that he was still fatigued after he went back to work on patrol.

On 1/6/23 petitioner presented to Dr. Chaturvedula following his call on 12/21/22. Dr. Chaturvedula noted that petitioner reported that he was involved in a brutal fight as he was taking an autistic person into custody. During the episode, petitioner reported that he was unable to catch his breath for a while, and recalled having purplish discoloration of palms, lips and all of his body. Dr. Chaturvedula noted that subsequent to this event he looked into the device and there were no concerns, but the rate responsiveness was not on at that time. He noted that it was activated on 1/6/23. Petitioner was extremely concerned about this episode and the risk of recurrence, and the implications that it might occur given the nature of his job as a cop. Petitioner was curious as to why it happened that day and never before, given that he had been in such instances after his surgery and placement of the pacemaker, without these reported symptoms. Petitioner noted concerns regarding continuing to discharge his duties as a police officer and whether or not he was limited by his cardiac condition. Dr. Chaturvedula discussed with petitioner that they could explore rate responsiveness. Dr. Chaturvedula noted that he would confer with Dr. Mina regarding any further adjustments to the device that needed to be made. He was also going to seek an opinion from Dr. Mina regarding risk stratification of petitioner's nature of the job, and

possible clinical and nonclinical implications thereof including consideration for downgrading intensity at work or considering alternate professions.

On 1/9/23 petitioner followed-up with Dr. Mina. He reported that he had an episode of purple arm and purple feet after taking a kid into custody, and felt terrible after that. She noted that the petitioner's pacemaker and valve were working well, and there were no issues with the device. She ordered an echo to establish post replacement parameters. She noted that Dr. Chaturvedula would continue to follow petitioner for his valve and INR. Dr. Mina was of the opinion that petitioner was considered high risk to work the full functions as a police officer given his complete heart block and weak heart muscle.

On 1/10/23 petitioner emailed Dr. Mina and informed her that he needed a note taking him off work until further notice per his appointment on 1/9/23. Dr. Mina provided him with an off work note that stated that "it is my medical opinion that Bradley R. Vaughn cannot work until further notice per my medical assessment." Petitioner did not return to work for respondent as a police officer or school resource officer based on this off work note.

Petitioner testified that after seeing Dr. Chaturvedula and Dr. Mina he was put on several heart failure medications. He denied ever being on these medications before 12/14/22.

On 2/4/23 adjustments were made to petitioner's pacemaker. Petitioner testified that in February and March of 2023 he was continued off work by Dr. Mina and Dr. Marshall.

On 3/7/23 Dr. Mina increased petitioner's Toprol XL to 50 mg/day since his heart rate was above his average. She also noted that Dr. Chaturvedula was considering prescribing Entresto, and was also considering upgrading it if petitioner's ejection fraction dropped below 35%. It was noted that his CMP ejection fraction was at 40%.

An undated letter was sent to petitioner's attorney Stephen Kelly, by Dustin Sutton, Chief of Police, regarding petitioner. It stated:

"[I]t was my understanding Mr. Vaughn was unable to return to work in his prior capacity. We are prepared to bring Mr. Vaughn back in a lighter capacity. His job duties would consist of sitting at a desk and not lifting greater than 5 lbs. This position reports to the Chief of Police and the hours are 3:00 pm to 11:00 pm. Wednesday through Sunday. Please have your client report back to begin this position effective Wednesday, March 29, 2023 at the Village of Peoria Heights Police Department."

On 3/25/23 Kelly sent an email to Anthony Enrietti (respondent's attorney) regarding a letter petitioner received from CPH regarding his return to work. The email discussed money that was to be sent to petitioner following the email the prior week. Also, it was in response to a letter petitioner received the day before

offering him light duty work. It also noted that the petitioner had received FMLA paperwork Friday morning. Kelly told Enrietti that respondent was ignoring the fact that Dr. Mina had taken petitioner off work as of 1/10/23.

On 3/28/23 Kelly sent another email to Enrietti informing him that since petitioner has been authorized off work since 1/10/23, in no way was he abandoning his job. He stated that any light duty offers violate the complete off work slip. At 9:01 am Enrietti responded "You and I both know Dr. Mina's off work slip is garbage. For work comp purposes I did recommend paying the advance so we can have the minimal treatment records reviewed. I do not represent the Village/police Dept other than it relates to the wc case." At 9:08 Kelly responded "So, do you recommend I call the chief directly regarding this issue?? If you are telling me this not your issue, I will." At 12:03 pm Enrietti wrote "What exactly is your issue? Pet has an off work slip from his doctor. And you may not call the chief. Prep a letter and send it to me to forward it on. I will determine if there is a wc component to your letter. Either way I will forward it on." At 12:06 pm Kelly responded "Considering the off work note, my client will not be reporting to light duty. I want your client to know that he is responding to their request, and simply not just blowing them off or abandoning his job. Forward this on, as my letter."

Petitioner testified that after 4/1/23 respondent never followed up with him as it relates to a light duty job with respondent.

On 4/20/23 petitioner followed-up with Dr. Chaturvedula. He noted that petitioner had been off work given his cardiac condition, and that petitioner was filing for disability in hopes of finding a desk job. He noted that petitioner was compliant with medical therapy, his blood pressure appeared to be well controlled, and he had not had any more episodes of concern. He noted that petitioner was on Coumadin, Jardiance, and Entresto for heart failure, and requested Dr. Mina to take over his care.

Petitioner testified that on 5/8/23 he followed-up with Dr. Marshall, and still had complaints of fatigue, lightheadedness, and shortness of breath. He denied any of these complaints prior to 12/14/22.

On 5/16/23 petitioner underwent a Section 12 evaluation by Dr. David Fletcher at SafeWorks Illinois, at the request of his attorney. Petitioner reported that on 12/14/22, while working as a school resource officer, he had an altercation with a student and noticed his hands, feet and lips turned purple. He also noted that he was extremely short of breath. He noted that he had been off work since 1/10/22. Petitioner noted that he could complete most of his activities of daily living, but was unable to mow the lawn and walk around the block because these activities caused him shortness of breath.

Dr. Fletcher noted petitioner had a 25 year history of heart disease (since age 13), as well as a history of bicuspid aortic valve and a degree of aortic regurgitation due to bicuspid aortic valve. He also noted that

petitioner underwent a Bentall procedure with aortic valve and root replacement, and had a complete heart block after the procedure, for which he had a dual-chamber Medtronic pacemaker implanted. Petitioner complained of fatigue with activity, as well shortness of breath, dizziness, and weakness with exertion. Dr. Fletcher's clinical examination of petitioner was unremarkable except for evidence of past surgery and the fact that he had a permanent implantation of a pacemaker. Petitioner denied any chest pain. Dr. Fletcher noted that petitioner had minimal depression.

Following his examination and record review, Dr. Fletcher gave his opinions as to whether or not petitioner's conditions of ill-being are related to his work activities for respondent. Dr. Fletcher was of the opinion that petitioner's condition is related to an aggravation of a preexisting condition. Petitioner reported that after his cardiac surgery he had no issues for a year until the altercation occurred. He noted that petitioner had been off work since the incident on 12/14/22 and his cardiologist recommended him going on disability. Dr. Fletcher noted that petitioner told him that his job causes him too much stress on his heart, and if petitioner continues to work with his lowering ejection fraction, he will go into heart failure, as he has evidence of cardiomyopathy.

Dr. Fletcher noted that the incident was the straw that broke the camel's back during the arrest of a student who was acting out. He noted that petitioner suffered a complete heart block as his pacemaker malfunctioned and he immediately had decreased output. Dr. Fletcher was of the opinion that this is something that can reoccur.

Dr. Fletcher noted that respondent did not require a fitness for duty evaluation when petitioner returned to work after his November 2021 cardiac surgery. Dr. Fletcher was of the opinion that based on petitioner's past history, he should have never been hired as a police officer in the first place with his significant heart history since age 13, when he first started having PVC's or premature ventricular contractions and was diagnosed with cardiomyopathy. Dr. Fletcher was also of the opinion that petitioner should never have returned to his work as a police officer after his cardiac surgery in November of 2021. Dr. Fletcher was of the opinion that petitioner's diagnosis of cardiac issues was aggravated by his work activities through the City of Peoria Heights.

Dr. Fletcher's examination revealed shortness of breath and dyspnea on exertion with activity, as well as surgical scars related to cardiac valve replacement surgery and pacemaker insertion. Dr. Fletcher's diagnosis was status post November 2021 pacemaker insertion for complete heart block, cardiomyopathy, aortic root surgical repair, and AV valve reconstruction with an episode of heart blocking during the work incident on 12/14/22 when he had an altercation with a student while working as a school resource officer.

Dr. Fletcher was of the opinion that petitioner needed to leave law enforcement as he is not fit for duty as a police officer. If he continued as a police officer, he would have the risk of sudden death and would pose as a risk to himself, as well as the public he is sworn to protect. Dr. Fletcher believed that petitioner is capable of working a sedentary light position in an environmentally controlled setting to avoid extremes of heat and cold. He noted that he was concerned about petitioner being on anticoagulation and being involved in altercations or incidents, and responding to emergency situations which could increase petitioner's risk of bleeding/hematoma, etc.

Dr. Fletcher was of the opinion that petitioner had reached maximum medical improvement from his work incident. Dr. Fletcher was of the opinion that petitioner cannot work in a stressful high paced work environment, and needs to remain in the sedentary light work level-controlled environment. He was further of the opinion that petitioner cannot perform law enforcement duties where he has a prisoner or is apprehending perpetrators.

On 4/26/23 petitioner underwent a Section 12 examination performed by Dr. Dan Fintel at Northwestern University, The Feinberg School of Medicine. Petitioner reported that on 12/14/22 he was apprehending a student while at work, and became involved in a physical altercation with the student. During the course of the altercation, he became very short of breath, and noticed that his lips and hands appeared purple in color. Petitioner reported that he took a rest for about 30 minutes and felt as though he was able to catch his breath again, so he drove back to his home. He noted that because his symptoms resolved he did not seek emergency care for these symptoms. Petitioner then gave a history of his call to his cardiologist on 12/14/22, and his treatment on 1/6/23 and 1/9/23.

Petitioner told Dr. Fintel that on 1/9/23 Dr. Mina noted that he was "high risk to work full function as a police officer given his complete heart block and weak heart muscle." Based on these recommendations, petitioner stated that he has not proceeded to resume full duty work and perform any physical labor. Following his record review and examination of petitioner, Dr. Fintel noted that petitioner denied any recurrent episodes of similar symptoms, but had not undergone any formal exercise testing to evaluate his functional capacity.

Dr. Fintel was of the opinion that given that the petitioner denies any current symptoms, and has not exerted himself to the same degree as he had been exerting himself at the time of the incident, there is no evidence linking the incident on 12/14/22 to any subsequent symptoms or problems. Dr. Fintel was of the opinion that petitioner had underlying LV dysfunction prior to the incident which had been, and continues to be treated appropriately with medical therapy. Dr. Fintel did not believe petitioner sustained a heart related injury as a result of the incident on 12/14/22. However, he also noted that it is plausible that significant physical exertion, with petitioner's pacemaker not having heart rate responsiveness enabled, would provoke significant

fatigue and shortness of breath. Dr. Fintel was of the opinion that these symptoms did not appear to cause any lasting damage based on the records provided and based on his assessment of his status during his evaluation. Dr. Fintel was of the opinion that petitioner warranted formal exercise testing with echocardiography to assess his functional capacity and determine whether his LV dysfunction has improved following initiation of appropriate medical therapy. He noted that once this has been assessed, then petitioner can be considered for a return to full duty, or, if his symptoms remain limiting, he can be considered for a position which is sedentary and requires little physical exertion.

On 9/13/23 petitioner was seen for his regular pacemaker check and management. An echocardiogram was recommended to evaluate continued valve function as well as his LV function after optimization of neurohormonal blockade with Jardiance, Entresto and beta-blockade. This was not approved.

On 1/1/24 Dr. Fletcher authored an addendum report at the request of petitioner's attorney. Dr. Fletcher noted that in addition to reviewing his prior report in depth, he conducted additional research regarding police work and cardiovascular conditions. Dr. Fletcher was of the opinion that respondent did not require a fitness for duty evaluation when petitioner returned back to work after his November 2021 cardiac surgery, even though he underwent an extensive procedure that should have disabled him from returning to police work as he had several disabling cardiovascular disease conditions: 1) complete heart block which required installation of a pacemaker (which is not foolproof to protect an individual as what happened in this instant case during the December 2022 altercation); 2) valvular heart disease which required a valve replacement necessitating going on anti-coagulation medication; and, 3) cardiomyopathy. Dr. Fletcher was also of the opinion that there was never a determination whether or not petitioner met the minimal standard of care for cardiovascular fitness requirements for a police officer in the United States to perform at a metabolic work level of at least 12 METS. Dr. Fletcher noted that respondent has no published medical fitness standards that have been made available to his specialist to review.

Dr. Fletcher noted that the American College of Environmental and Occupational Medicine (ACOEM) general guidance on cardiovascular conditions states that:

“Law enforcement officers (LEOs) with known cardiovascular disease (CVD) may be capable of safe and effective job performance. However, LEOs with CVD (or CVD risk factors) are at increased risk for sudden incapacitation, jeopardizing their ability to perform critical job functions (see also LEO chapter on Essential Job Functions). Therefore, an individualized assessment of the LEO is needed to ensure safe and effective job performance. The person conducting the evaluation must be familiar with the following:

- The physiologic demands of the critical job functions;
- Cardiovascular disease (CVD) and its management; and

- The risk for sudden incapacitation associated with CVD conditions and CVD risk factors.

Dr Fletcher was of the opinion that no such individualized assessment was made of Officer Vaughn following his cardiac surgery, and that petitioner did not have an individualized occupation-specific post open heart surgery cardiac rehab program that showed he was capable of meeting the minimal cardiovascular requirements of police work.

Dr. Fletcher reiterated that with regards to petitioner's injury on 12/14/22, it remained his opinion that petitioner's present condition is related because it represents a permanent aggravation of a preexisting condition. He was of the opinion that as a result of the incident on 12/14/22 the cardiac output required to respond to the altercation overwhelmed the pacing parameters of his device. Dr. Fletcher noted that petitioner believes that his job causes too much stress on his heart and lowering of his ejection fraction, and if he continues working, his condition will get worse. Dr. Fletcher was of the opinion that petitioner is justifiably worried that he will go into heart failure, as he has evidence of underlying cardiomyopathy.

On 3/19/24 petitioner returned to Dr. Mina for his regular pacemaker check and management. She noted that petitioner had no chest pain, palpitation, or shortness of breath. She noted that petitioner was active and about with no complaints. It was noted that an echocardiogram in November of 2023 showed ejection fraction of 35-40%.

On or about 3/28/2024 petitioner began working as an inside sales agent for Adam Merrick Real Estate. Petitioner testified that he makes about \$35,000.00 a year. He further testified that his job does not require him to do any type of security or police work. He stated that all he does is schedule appointments for all the listing agents because they have a very large team of agents. He also takes phone calls, sends emails, and attends meetings. He stated that everything is electronic. He testified that while on the phone call he gets information and writes it down, and after the call ends he enters all that information into the computer. Petitioner has no contact with people that come into the office. He stated that the office has 14 or 15 employees. Petitioner testified that his doctors allowed him to perform this type of work. Petitioner works 40 hours a week. Petitioner testified that he accepted this job because it met his physical restrictions, and Adam Merrick is an outstanding man, who coaches his son's wrestling, and when he told him about his hardships, Merrick told him he had a job he could offer him that would meet his restrictions. Petitioner testified that he did not pursue any other jobs with similar physical requirements.

On 5/17/24 the evidence deposition of Dr. Fintel was taken on behalf of the respondent. Dr. Fintel is board certified in internal medicine, cardiology and nuclear cardiology. Dr. Fintel is a professor of medicine at Feinberg School of Medicine at Northwestern University, and a senior attending physician at Northwestern

Memorial Hospital. Dr. Fintel also has academic responsibilities. Dr. Fintel testified that although he is familiar with pacemakers, he is not an electrophysiologist. He noted that he does not implant pacemakers, or deal with pacemakers every day. Dr. Fintel testified that he takes care of patients and their pacemaker problems that include infected pacemakers, malfunction of pacemaker, etc. Dr. Fintel noted that petitioner had a bicuspid aortic valve for which he underwent a Bentall procedure on 11/8/21. He noted that petitioner had some post-op complications, and it was treated with a dual chamber permanent pacemaker. Dr. Fintel noted that after the surgery on 11/8/21 petitioner was taking state of the art treatment for patients with enlarged left ventricles. Dr. Fintel noted that petitioner's cardiologist on 12/21/22 was concerned that petitioner's pacemaker did not have rate responsiveness enabled, and his pacemaker may not have been able to augment his heart rate appropriately during a stressful or physically taxing situation such as the one he experienced on 12/14/22.

Dr. Fintel was of the opinion that there was no evidence of any arrhythmic events that could have explained why he felt poorly on 12/14/22. Dr. Fintel opined that there was no permanent alteration of petitioner's cardiovascular system as a result of the incident on 12/14/22. Dr. Fintel was of the opinion that the event on 12/14/22 was emotionally stressful, and transiently physically stressful because he suddenly had to exert himself more. That said, Dr. Fintel was of the opinion that as a result of the incident on 12/14/22 there was no condition that weakened petitioner's heart muscle, or caused a loss of muscle tissue. He was of the opinion that petitioner did not sustain a heart attack or arrhythmia, although arrhythmias are transient events that are reversible. He was also of the opinion that there is no evidence of any lasting impediment to cardiac contraction that occurred during the relatively short period of time when he was excessively fatigued, and briefly cyanotic. He was further of the opinion that stressful episodes don't kill heart muscle and don't lead to permanent sequelae.

Dr. Fintel was of the opinion that the incident on 12/14/22 stimulated petitioner's physicians to in fact improve the programming of his pacemaker to become rate responsive, which would presumably give him increased strength and endurance when he has to do physically exerting tasks where he needs a higher heart rate to maintain his cardiac output. Although Dr. Fintel did not believe petitioner needed any work restrictions as they relate to his heart, he believed petitioner would benefit from formal exercise testing. Based on what he saw from the previous echocardiograms and what petitioner reported to him, Dr. Fintel thought petitioner would be capable of a reasonable degree of physical exertion. He did not believe petitioner could run at a fast speed after a potential criminal, but could certainly engage in moderate activities and in sedentary activities. Dr. Fintel then stated that he believed petitioner's physical capabilities today would be as good as they were before 12/14/22.

On cross examination Dr. Fentil was not sure if petitioner was a police officer at the time of the incident on 12/14/22, or a security officer at the school. Dr. Fentil had no evidence that petitioner missed any work leading up to 12/14/22 due to cardiac issues. He agreed that the records in the case and petitioner's history indicated that he was able to perform unrestricted work as a police officer for respondent in the 3 months leading up to 12/14/22. Dr. Fentil agreed that the incident on 12/14/22 contributed to petitioner's complaints immediately following the incident as it relates to his hands turning purple, and the symptoms he felt on 12/14/22. Dr. Fentil also agreed that as a result of the incident on 12/14/22 petitioner's pacemaker was altered or regulated by the physicians he saw a week later. Dr. Fentil testified that he never saw petitioner after his exam in April 2023, and never saw any additional treatment records. Dr. Fentil testified that over 90% of his work is for the respondent employer. Dr. Fentil did not dispute that petitioner was working unrestricted duty right before the incident on 12/14/22; that an incident occurred at work on 12/14/22; and, that petitioner is now on restricted work by other doctors.

On redirect examination Dr. Fentil was of the opinion that if he was presented with an opinion from another doctor or expert that had information and concluded, based on a very poor performance on a stress test that petitioner was not able to do ordinary activity or moderate activity, then he would change his opinion regarding petitioner's work ability. Dr. Fentil was of the opinion that with an ejection fraction of 40% petitioner should be able to do activities that includes moderate activity, walking around, walking around a school, and presenting himself for security issues. He further testified that beyond that he would need more objective evidence. Dr. Fentil was of the opinion that whatever work restrictions that petitioner deserved and is entitled to, would have existed prior to 12/14/22 and would be the same after that date. He was further of the opinion that there was nothing that happened as a result of the incident on 12/14/22 that entitled him to more or less restrictions. Again, he stated that these opinions could be changed based on the results of an objective stress test.

On 8/27/24 at 2:02 Britta White from Kelly's office, sent an email to Jim Magiera (respondent's attorney). She wrote, "[S]teve is available on 9/6, 9/9 or 9/10 for a pretrial during the Peoria call. Please advise which date you prefer. At 2:06 pm Magiera wrote, "I can do 9/10. Our vocational counselor has been trying to schedule an initial assessment of the Petitioner with your office. Is there an objection to this?" At 2:09 pm Kelly sent an email to Jim Magiera (respondent attorney). Kelly stated "My client has a job, thus, vocational assistance is not needed, This will be a very significant wage differential case. Present case value will exceed \$450,000.00."

On 2/4/25 respondent had a Labor Market Survey Report regarding petitioner completed by Katelyn Glembot, MRC, CRC, Vocational Consultant. The report was made without any direct contact with petitioner.

Glembot identified petitioner's job as a School Resource Officer. Based on the work capabilities outlined by Dr. Fletcher on 5/16/23 and Dr. Fintel on 5/22/23, Glembot identified the following vocational opportunities:

- 1/17/25 – Administrative Assistance/Fire Department – City of East Peoria
- 1/17/25 – Secretary/Scheduler/Procurement – River City Machine, LLC
- 1/17/25 – Caterpillar-Operator – Caterpillar
- 1/22/25 – Administrative Assistant – Carle Health
- 1/22/25 - Deputy Clerk – Woodford County Circuit Clerk
- 1/22/25 – Sales Representative – Valor Technologies Cleaning LLS
- 1/29/25 – Security Operations Center Dispatch – Allied Universal
- 2/4/25 - Record Office Coordinator – State of IL - DOC

Glembot indicated that the positions surveyed suggest a starting range of \$20.36 to \$36.06 an hour.

On 4/5/25 the evidence deposition of Dr. Fletcher was taken on behalf of petitioner. Dr. Fletcher is board certified in occupational medicine, as well as occupational medicine for 35 years. He stated that he works with employers on a daily basis, being able to determine a causality as it relates to a condition of ill-being and work injuries. Dr. Fletcher testified that he has worked with individuals who have suffered cardiac injuries. He noted that it is a relatively common occupational, as well as nonoccupational issue. Dr. Fletcher noted that since 1986 he has seen hundreds of police officers over his career for different jurisdictions, and for pension examinations.

Dr. Fletcher understood petitioner had an acute cardiac event that happened on 12/14/22, when he was working as a school resource officer, and was involved in an incident where he had to deal with a student. Dr. Fletcher was of the opinion that due to petitioner's physical exertion during the incident, he ended up having a syncopal type of episode after the pacemaker that was installed for a preexisting cardiovascular condition failed to activate and particularly pace his heart. He was of the opinion that petitioner's heart stopped beating.

Dr. Fletcher was of the opinion that following petitioner's last procedure done prior to the work injury, he was asymptomatic and returned to police work until the incident on 12/14/22. Dr. Fletcher believed that during the altercation with the student petitioner started noticing his hands and feet turning purple and cold, was short of breath, and was basically passing out. He was of the opinion that petitioner got an adrenaline rush dealing with the event which he perceived was potentially life-threatening, and it overwhelmed his ability to respond to it because his pacemaker did not keep up the demand that he needed for his cardiac output. Dr. Fletcher noted that petitioner was not able to return to work for respondent. Dr. Fletcher opined that the incident on 12/14/22 was a permanent aggravation of a preexisting condition, and petitioner is not able to return to work as a police officer as a result of the injury on 12/14/22. Dr. Fletcher was of the opinion that prior to the event on 12/14/22

petitioner was asymptomatic and his cardiac condition was being controlled to the extent he did not have symptoms related to his cardiomyopathy. However, following the event he became symptomatic. Dr. Fletcher noted that after he saw petitioner in May of 2023, petitioner reported that he had fatigue with activity, had shortness of breath, dizziness, and weakness with exertion, and had to be very careful with his activities. Dr. Fletcher opined that the reports and literature he provided in his supplemental report support his opinions on causation.

Dr. Fletcher was of the opinion that petitioner has to avoid overtasking himself from an exercise endurance aspect; continue his blood thinners, medications for his cardiomyopathy, and cholesterol medications; and, maintain his medical treatments to maintain his cardiovascular function. Dr. Fletcher was also of the opinion that petitioner needs to continue with his maintenance of his pacemaker.

On cross examination Dr. Fletcher testified that the majority of his work is as a recurrent case treating physician, and coordinating care with physical therapy or other physicians who are in or outside of his office. He testified that 50% of his patients were involved in some kind of injury care where there is a claim. He further testified that he also does a lot of specialized exams, fitness for duty exams, as well as FAA medical exams. Dr. Fletcher testified that he is not a cardiologist, but has 2 days of training and testing on cardiovascular issues every year.

Dr. Fletcher was of the opinion that petitioner's heart issues happened soon after the incident on 12/14/22. Dr. Fletcher was further of the opinion that petitioner did not receive or seek immediate care after the incident because his pacemaker ended up responding after the incident and petitioner had a restoration of his cardiac output and he continued working for a while. Dr. Fletcher testified that he could not state whether petitioner's physiologic condition before the incident was the same after the incident because he had not seen any follow-up objective cardiac output testing, since it was denied by the insurance company. But he did note that petitioner's symptomatology has persisted. Dr. Fletcher testified that respondent did not have petitioner perform any simulated testing on police officers where they have a scenario where they are responding to an emergency situation, even though it had been recommended. Dr. Fletcher also testified that petitioner told him he becomes symptomatic every time he tries to exert himself. Dr. Fletcher stated that petitioner has not sustained any additional like incidents since the incident on 12/14/22. Dr. Fletcher opined that petitioner can perform sedentary non-potential altercation response type of positions like office work. Dr. Fletcher testified that petitioner told him he was still experiencing fatigue, dizziness, weakness, and shortness of breath with exertion.

Dr. Fletcher testified that based on everything he has seen with respect to petitioner's case, that there was a documented failure by the pacemaker to respond to the cardiac demand.

Respondent offered into evidence the Job Description for respondent's Police Officer position, and School Resource Officer position. (RX10, RX11)

Petitioner testified that he is still on the heart failure medications prescribed after 12/14/22, and will be for the rest of his life. He further testified that he has never been released to full duty work as a police officer by his treating physicians, and has never returned to work for respondent. Petitioner further testified that he still sees Dr. Mina every 6 months, and his general doctor every 90 days.

Petitioner currently reports fatigue any time he exerts himself, including when he climbs stairs. Petitioner testified that he can no longer mow his lawn. He stated that on a recent vacation he went for a walk on a paved trail and that was very exerting for him. He stated that he gets winded extremely easily. He can only play catch for a very short time with his kids before he has to go inside and sit, rest or lay down. He testified that his biggest issue is the amount of fatigue his body feels.

Petitioner testified that the only time he talked with the police chief was when he was telling him about the incident and the police chief told him that he needed to put it on letterhead and fill out an application with respect to the incident on 12/14/22. No light duty offer was discussed at that time. He further denied he ever had an in-person meeting with him at the police station to discuss a light duty offer. Petitioner testified that the only information he had regarding any light duty offer from respondent was from the letter that was issued to his attorney.

Petitioner testified that he has had no hospital admissions since December of 2022. He further testified that prior to 12/14/22 he was able to subdue disruptive students. Petitioner testified that he was the only officer assigned to the schools.

Theresa Vaughn, petitioner's mother testified on behalf of petitioner. Vaughn testified that since the incident on 12/14/22 petitioner has been extremely tired. She testified that he can't mow his lawn, and gets winded. She further stated that he also gets short of breath when going up and down stairs. Vaughn testified that prior to 12/14/22 he was able to do a lot of fun family activities such as kickball in the park, and hiking and walking on trails on vacation, but can no longer do these things. She testified that petitioner can no longer play with his kids like he used to. Vaughn testified that she sees petitioner for dinner a couple times a week, as well as going to church and lunch together every Sunday, and going on vacations.

Dustin Sutton, Chief of Police and Village Administrator for Village of Peoria Heights, was called as a witness on behalf of the respondent. Chief Sutton ultimately oversaw petitioner's work as a police officer. Chief Sutton testified that he spoke with petitioner after he submitted a memo regarding the injury on duty. At that time, Sutton offered petitioner a light duty position on the 2nd shift. His duties would include doing

paperwork, processing FOIA requests, handling walk-in traffic, and whatever might be in a secured, behind a Level 7 wall of armor. He stated that petitioner would retain his full pay and benefits. Chief Sutton testified that petitioner declined the offer. He also testified that Deputy Chief Ahart was also present when he made the offer of light duty work.

Chief Sutton testified that following the conversation, he talked with counsel, and then issued a letter to petitioner's attorney memorializing the light duty job offer that was to start on 3/29/23. He testified that he then received an email from petitioner's attorney informing them that petitioner would not be reporting to work the light duty job. Chief Sutton testified that he never rescinded the light duty offer to petitioner, but another officer on light duty is currently working in the position he offered petitioner. Chief Sutton testified that he had a conversation with petitioner early on in his working career, prior to be assigned a school resource officer, where the petitioner told him that scheduling was a conflict for him and his family on the 3rd shift. Chief Sutton thought petitioner might leave the department so he told him to hold on, that there was going to be a special assignment coming that would be perfect for him. Chief Sutton testified that petitioner was eventually offered the school resource officer position, which he accepted.

On cross examination, Chief Sutton testified that he was not disputing the fact that on 12/14/22 petitioner was involved in a work accident as a school resource officer. Chief Sutton also did not dispute that petitioner was taken off work by his doctor on 1/6/23, if that's what the memo said. Chief Sutton testified that petitioner reported the injury to him in January of 2023, and that is when he had the conversation with him regarding the light duty offer. Chief Sutton agreed that he spoke with counsel after his light duty discussion with petitioner, and that the light duty offer letter to petitioner's attorney was not sent until March of 2023. He testified that no additional conversations with petitioner regarding light duty were held with petitioner between January and March of 2023, prior to the light duty letter being sent to petitioner's attorney in March of 2023. Chief Sutton testified that he did not know petitioner was authorized off work by his doctor when he wrote the letter, but then agreed that he knew petitioner had been taken off work by his doctor when petitioner submitted his incident memo to him in January of 2023. Chief Sutton testified that he did not know if petitioner was fully off work, or on light duty when he sent the letter on 3/29/23.

Deputy Chief Christopher Ahart, was called as a witness on behalf of respondent. Deputy Chief Ahart oversees all the officers, scheduling, training logs, any type of discipline, and day to day operations of the department. He testified that petitioner reported an incident on 12/14/22, when he came in his office the same day as the incident and provided him with the details about the incident. He testified that petitioner completed the incident report. Deputy Chief Ahart testified that following the incident petitioner took a week of PTO off during the week of Christmas. He testified that upon returning to work petitioner worked as a regular patrol

officer for about 3 weeks until school resumed. Chief Ahart testified that he was present when Chief Sutton offered petitioner the light duty job on the 2nd shift.

On cross examination, Deputy Chief Ahart testified that petitioner was involved in an incident with a student on 12/14/22, and saw the body cam detailing the event. He testified that the incident was an aggressive event.

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

Petitioner presented un rebutted testimony that on 12/14/22 while working as a school resource officer he was involved in an altercation with a combative student. Initially, petitioner tried to verbally engage with the student in an attempt to calm him down, and deescalate the situation. When this did not work, the student attempted to get by him and Mooney towards the cabinets with glass doors and try to punch the doors. Petitioner then grabbed the student and tried to restrain him, but the student tried to spin around and hit him. At this point, petitioner took the student to the ground. It took about 2 minutes to get the student in handcuffs due to the fact that the student continued to resist and struggle with petitioner. Once in handcuffs, petitioner and Mooney lifted him up and petitioner kept his arm through the student's arms to keep him restrained as the student continued to try and thrash around to get at the cabinets. At this point, petitioner had a hard time catching his breath, and taking deep breaths hurt. Petitioner also testified that from his knees down to his feet felt like they were on fire, and his legs were very heavy. He also noticed that his hands from the tips of his fingers to the middle of his palm had really dark streaks of purplish-blue color. At this time, petitioner did not feel well and realized that something was going on.

Chief Sutton testified that he spoke with petitioner after he submitted a memo regarding the injury on duty. He stated that he had no reason to believe this incident did not occur on 12/14/22.

Deputy Chief Ahart testified that following the incident on 12/14/22, petitioner returned to the station and provided him with the details about the incident. He also testified that petitioner completed an incident report that day. Chief Ahart saw the body cam detailing the event, and noted that it was an aggressive event.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he sustained an accidental injury that arose out of and in the course of his employment by respondent that arose on 12/14/22.

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

It is un rebutted that at the age of 13 petitioner was diagnosed with PVC's, a random or irregular heart beat that would hit every once in a while. Petitioner was provided no treatment or medication for this condition. He was told they would just monitor it.

Petitioner went on to play sports in high school and pass all the physical examinations to play. During his college years petitioner was never under any active care for his cardiac issues, and had no cardiac symptoms, such as fatigue or lightheadedness.

Prior to working for respondent, petitioner worked at WalMart doing security; for The Children's Home as a residential counselor; as a volunteer firefighter for Northern Tazewell Fire Department; and, as an EMT. While performing these jobs petitioner had no restrictions related to any cardiac issues. He also had no cardiac issues, or problems with fatigue or lightheadedness while performing these jobs.

Following these jobs, petitioner was hired as a police officer for the city of Normal, IL. Petitioner went through the police academy for five months and was able to perform all the physical activities required of that training without incident. He testified that he had no difficulties as they related to his heart condition while in the police academy. He denied any lightheadedness, or shortness of breath. Petitioner testified that he also passed the fitness for duty examination for a police officer for the City of Normal. Petitioner worked as a police officer for the City of Normal for about 5 ½ years without any difficulties as they relate to his heart. He was able to perform all the duties of a police officer.

In 2008 petitioner was hired by respondent as a police officer. Petitioner testified that he had no issues with his heart at that time. Petitioner performed all the duties of a police officer and school resource officer. Petitioner denied any problems with his heart while working in either of these positions for respondent before 12/14/22.

On 1/18/21 petitioner presented to Dr. Marshall for medication management. He had no questions or concerns. Petitioner did report a history of a bicuspid aortic valve, as well as the degree of aortic regurgitation due to his bicuspid aortic valve. He noted that he had not seen a cardiologist in the last 15 years for this condition, despite the fact that he was told at that time to come back in 10 years. Dr. Marshall's exam of petitioner's heart noted normal rate and regular rhythm. His heart sounds were normal with no murmur, friction rub or gallop. Dr. Marshall referred petitioner to a cardiologist for overdue surveillance of his bicuspid aortic valve.

Petitioner was seen by Dr. Chaturvedula and on 11/18/21 underwent an aortic valve replacement with modified Bentall procedure performed by Dr. Chaturvedula. The procedure was complicated by a complete

heart block, and on 11/24/21 petitioner was given a permanent pacemaker. Petitioner was discharged on 11/25/21, and on 1/18/22 petitioner was released to full duty work without restrictions for respondent. Petitioner resumed his work as a police officer and school resource officer for respondent. At that time, petitioner had no symptoms that would have precluded him from doing his work as a police officer, and respondent must have agreed, given that they did not require petitioner to undergo a fitness for duty examination before returning to work.

Following the surgery, through 11/18/22, petitioner regularly followed up for his pacemaker. He reported no chest pain, palpitation, or shortness of breath. He reported that he was active and about, with no cardiac complaints. He reported that he was asymptomatic and able to do most activities. Following his examination on 11/18/22 it was determined that the pacemaker was working well and there were no issues with the device. Dr. Mina continued petitioner's full duty work status.

Petitioner testified that from 1/18/22 through 12/14/22 he performed the full duties of a police officer for respondent that included responding to emergency calls, and confrontations with a large group of new kids from an opposing school that got into large fights with the other students at the school where he was working. Petitioner stated that there was one fight after 1/18/22 that was a large fight that required a very large police response. Petitioner testified that there were several foot pursuits throughout this time, and it was a regular occurrence to have fights at the school in 2022. From 1/18/22 through 12/14/22 petitioner was able to engage in all physical activities his job as a police officer and school resource officer required without any cardiac issues, including lightheadedness or fatigue.

After the accident on 12/14/22, the symptoms petitioner experienced during the altercation that day did not all go away after the accident, namely the feelings of exhaustion and fatigue. Petitioner saw Dr. Chaturvedula on 1/6/23 and Dr. Chaturvedula told petitioner there were no alerts on his pacemaker, but given that his tachy tier was set at 188 bpm, and his rate responsiveness was not on at the time of the injury, he was unable to know if petitioner was having an event at the time of the injury. Dr. Chaturvedula was of the opinion that they needed to make sure the rate responsiveness on the pacemaker was turned on, especially given that with such an adrenergic rush, it would be important for petitioner's pacemaker to ramp up to the rate of 30 so that petitioner would not feel bad. Dr. Chaturvedula opined that it was not inconceivable that given the high intense situation petitioner was in on 12/14/22 that petitioner would feel the symptoms he felt.

Petitioner continued to follow up with Dr. Chaturvedula, Dr. Mina, and Dr. Marshall, but his complaints of exhaustion and fatigue continued. Following the injury on 12/14/22 Dr. Chaturvedula and Dr. Mina placed petitioner on several new medications for heart failure.

Causal connection opinions were offered by Dr. Fletcher who examined petitioner on behalf of petitioner, and Dr. Fintel on behalf of respondent.

Dr. Fletcher opined that petitioner's current condition of ill-being is causally related to an aggravation of a preexisting condition. Dr. Fletcher was of the opinion that petitioner suffered a complete heart block on 12/14/22 when his pacemaker malfunctioned and he immediately had decreased output. He was further of the opinion that petitioner has reduced cardiovascular reserve as a result of the injury on 12/14/22.

Dr. Fletcher was of the opinion that prior to 12/14/22 petitioner was asymptomatic, his cardiac condition was being controlled to the extent he did not have any symptoms related to his cardiomyopathy, and he was able to work the full duties of a police officer without restrictions, but following the event on 12/14/22 he has remained symptomatic. These symptoms include fatigue with activity, as well as shortness of breath, dizziness, and weakness with exertion.

Dr. Fintel opined that since petitioner denied any current symptoms, and had not exerted himself to the same degree as he had been exerting himself at the time of the incident, there is no evidence linking the incident on 12/14/22 to any subsequent symptoms or problems. The arbitrator finds this opinion less than persuasive given that since 12/14/22 petitioner has repeatedly reported that he is exhausted and fatigued with any exertion.

Dr. Fintel first stated that he did not believe petitioner sustained a heart related injury as a result of the incident on 12/14/22, but then stated that it is plausible that significant physical exertion with petitioner's pacemaker not having heart rate responsiveness enabled, would provoke significant fatigue and shortness of breath. Dr. Fintel then concluded that based on his review of the records and his assessment of petitioner, that petitioner's symptoms at the time of the injury that he claims have continued, did not appear to cause any lasting damage. The arbitrator finds Dr. Fintel's opinion that petitioner's symptoms of significant fatigue and shortness of breath did not occur to cause any lasting damage inconsistent with the credible medical evidence that supports a finding that since the injury on 12/14/22 petitioner has continually reported ongoing symptoms of fatigue and shortness of breath that have not abated.

The arbitrator finds it significant that even though Dr. Fintel noted that petitioner's cardiologist was concerned that petitioner's pacemaker did not have rate responsiveness enabled, and may not have been able to augment his heart rate appropriately during the stressful or physically taxing situation he experienced on 12/14/22, that he would still opine that even though the event on 12/14/22 was emotionally stressful, and transiently physically stressful because petitioner suddenly exerted himself more, that the incident on 12/14/22 did not cause his heart muscle to weaken, cause a loss of muscle tissue, or result in any evidence of a lasting impediment to cardiac contraction. The arbitrator does not give significant weight to these opinions, because

the credible medical evidence clearly shows that petitioner's physical condition did in fact change after 12/14/22, and petitioner was placed on new medications for heart failure that he was not on prior to the accident on 12/14/22.

Lastly, Dr. Fentil was of the opinion that petitioner would be capable of a reasonable degree of physical exertion and could certainly engage in moderate and sedentary activities, but he could not run at a fast speed after a potential criminal. Dr. Fentil also stated that he believes petitioner's physical capabilities today would be as good as they were before 12/14/22. The arbitrator again gives lesser weight to these opinions of Dr. Fentil because the arbitrator does not see how the petitioner is now unable to perform all the duties of a police officer today, if his physical capabilities today are as good as they were before 12/14/22. The arbitrator finds these two opinions contradictory to each other.

Based on the above, as well as the credible evidence, the arbitrator finds the causal connection opinions of Dr. Fletcher more persuasive than those of Dr. Fentil, and finds petitioner's current condition of ill-being is causally related to the injury he sustained on 12/14/22. The arbitrator bases this finding on the fact that immediately prior to the injury on 12/14/22 petitioner was able to perform the full duties of a police officer for respondent without incident and was not on any heart failure medications; that prior to the injury on 12/14/22 petitioner did not experience any shortness of breath or fatigue on exertion; that as a result of the emotional and stressful altercation on 12/14/22, petitioner had to exert himself more due to the fact that his pacemaker's rate responsiveness was not turned on, and this resulted in petitioner becoming extremely fatigued and briefly cyanotic in his efforts to restrain the combative student; that after the injury on 12/14/22, although petitioner's cyanotic symptoms resolved, his fatigue and shortness of breath on exertion continued; and, petitioner is now on medicine for heart failure that he was not on prior to the injury on 12/14/22.

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

Having found the petitioner's current condition of ill-being is causally related to the injury he sustained on 12/14/22, the arbitrator finds the medical services that were provided to petitioner from 12/14/22 through 4/14/25 were reasonable and necessary to cure or relieve petitioner from the effects of his injury on 12/14/22.

Respondent shall pay reasonable and necessary medical services from 12/14/22 through 4/14/25, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit of \$5,030.46 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 he is entitled to temporary total disability benefits from 1/6/23 through 3/28/24. A period of 63 5-/7 weeks. Respondent denies any liability for temporary total disability benefits.

Following the injury on 12/14/22 petitioner was taken off work by Dr. Mina on 1/10/23. Dr. Mina provided petitioner with an off work note that stated “it is my medical opinion that Bradley R. Vaughn cannot work until further notice per my medical assessment.” In February and March of 2023 Dr. Mina and Dr. Marshall continued petitioner off work.

Shortly before 3/29/23, Chief Sutton sent an undated letter to petitioner’s attorney acknowledging that petitioner was unable to return to full duty work, and that respondent was prepared to bring him back to work in a lighter capacity. He offered petitioner a job that consisted of sitting at a desk and not lifting greater than 5 pounds. He noted that the position reported to him and was from 3 pm to 11 pm Wednesday through Sunday. Chief Sutton in his letter asked petitioner’s attorney to have petitioner report back to work on March 29, 2023, at the Village of Peoria Heights Police Department.

Petitioner’s attorney, in an emails dated 3/25/23 and 3/28/23 between himself and respondent’s attorney, informed respondent’s attorney that Dr. Mina had petitioner totally off work, and as such, petitioner would not be accepting Chief Sutton’s offer to return to light duty work on 3/29/23.

After this date, petitioner never received another light duty offer for work from respondent. In fact, Chief Sutton testified that another officer on light duty was working the light duty position that was offered to petitioner.

On 4/26/23 Dr. Fintel was of the opinion that petitioner warranted formal exercise testing with an echocardiography to assess his functional capacity and whether his LV dysfunction had improved following initiation of appropriate medical therapy. He noted that once this had been assessed, then petitioner could be considered for a return to full duty, or, if his symptoms remained limiting, he could be considered for a position which was sedentary and required little physical exertion. There is no evidence in the credible record to support a finding that this testing was ever authorized by respondent.

On or about 3/28/24 petitioner began working as an inside sales agent for Adam Merrick Real Estate. This job requires no type of security or police work. All petitioner does is schedule appointments for all the listing agents. He also takes phone calls, send emails, and attends meetings. Petitioner earns \$35,000.00, and works 40 hours a week.

On 5/17/24, after petitioner began working his current light duty job, Dr. Fentil thought petitioner would be capable of a reasonable degree of physical exertion, but did not believe petitioner could run at a fast speed

after a potential criminal. He further believed that petitioner could certainly engage in moderate and sedentary activities. The arbitrator finds the job petitioner secured on 3/28/24 consistent with Dr. Fentil's opinions.

On 8/27/24, respondent's attorney Magiera, sent an email to petitioner's attorney informing him that their vocation counselor had been trying to schedule an initial assessment of the petitioner. Petitioner's attorney responded "My client has a job, thus, vocational assistance is not needed..."

On 2/4/25 respondent had a Labor Market Survey Report for petitioner completed. The report was made without direct contact from petitioner. The survey identified positions with a starting range of \$20.36 to \$36.06 an hour consistent with the opinions of Dr. Fletcher and Dr. Fentil as they related to petitioner's light duty capabilities.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he is entitled to temporary total disability benefits from 1/6/23 through 3/28/24, a period of 63-5/7 weeks. The arbitrator bases this finding on the fact that there is no credible evidence that petitioner can perform the full duties of a police officer; that once petitioner was able to work a light duty job respondent never offered petitioner another light duty job prior to 3/28/24; that on or about 3/28/24 petitioner secured a light duty job within his restrictions; that respondent did not attempt to offer any further light duty offers or vocational assistance until 5 months after the petitioner secured light duty work; and, there is no credible evidence to support a finding that the job petitioner secured is a sham job, especially given the fact that petitioner has been working in this position for over a year.

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), neither party offered into evidence an impairment rating. For this reason, the Arbitrator gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes petitioner was a police officer/school resource officer with respondent prior to 12/14/22. After the injury, petitioner is

unable to return to his full duty work as a police officer/school resource officer with respondent, or perform the duties of a police officer anywhere else. For this reason, the Arbitrator gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes petitioner was 37 years old on the date of injury. The arbitrator finds the petitioner has approximately 30 more years of work life expectancy. For this reason, the Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earning capacity, prior to the injury on 12/14/22 petitioner earned \$72,000.24. After the injury, petitioner secured a light duty job with Adam Merrick Real Estate for \$35,000.00 a year. The Labor Market Survey performed by respondent, based on the opinions of Dr. Fletcher and Dr. Fentil, indicates that petitioner could earn between \$20.36 and \$36.06 an hour, or \$42,348.80 and \$75,004.80. Petitioner is not claiming a wage differential, but rather a loss of his person as a whole pursuant to Section 8(d)2 of the Act. For this reason, the Arbitrator gives greater weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, show that as a result of the accident on 12/14/22 petitioner's rate responsiveness on his permanent pacemaker was not on, and petitioner got an adrenaline rush dealing with the event which he perceived was potentially life-threatening, and it overwhelmed his ability to respond to it because his pacemaker did not keep up with the demand he needed for his cardiac output. As a result, petitioner had a really hard time catching his breath, and taking deep breaths hurt. He testified that from his knees down, his feet felt like they were on fire, and his legs felt very heavy. Petitioner also noticed that his hands from the tips of his fingers to the middle of his palm had really dark streaks of a purplish-blue color. Following the accident, petitioner was able to calm himself down and his cyanotic symptoms eventually resolved. However, the petitioner continued to experience extreme fatigue, lightheadedness and shortness of breath with exertion. After the accident, petitioner was also placed on new medication for heart failure that he was not on prior to the accident on 12/14/22.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 45% loss of his person as a whole, pursuant to Section 8(d)2 of the Act. The arbitrator finds the petitioner sustained a loss of occupation, as it relates to working as a full duty police officer, the job he was working on 12/14/22.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC002478
Case Name	Vantreace Anderson v. Aperion Care
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0041
Number of Pages of Decision	24
Decision Issued By	Stephen Mathis, Commissioner, Amylee Simonovich, Commissioner

Petitioner Attorney	Steven Seidman
Respondent Attorney	Patrick Morris

DATE FILED: 2/10/2026

/s/ Stephen Mathis, Commissioner

Signature

DISSENT

/s/ Amylee Simonovich, Commissioner

Signature

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STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Vantreace Anderson,

Petitioner,

vs.

NO. 23WC002478

Aperion Care,

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 medical expenses, causal connection, prospective medical care, temporary disability, 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. 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 10, 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.

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.

FEBRUARY 10 2026

SJM/sj

o-12/16/2025

44

/s/ Stephen J. Mathis

Stephen J. Mathis

/s/ Christopher A. Harris

Christopher A. Harris

DISSENT

After reviewing the totality of the evidence, I respectfully dissent from the opinion of the majority and would find that Petitioner proved her condition of ill-being is causally-related to her accident on November 11, 2022. I do not believe that Petitioner incurred a subsequent non-workrelated injury that broke the causal chain.

“Under the Act, compensation may be awarded for a claimant’s condition of ill-being even though the conditions of his or her employment do not constitute the sole, or indeed principal, cause of injury.” *Teska v. Indus. Comm’n*, 266 Ill. App. 3d 740, 742 (1994), citing *Brady v. Louis Ruffolo & Sons Constr. Co.*, 143 Ill. 2d 542, 548 (1991). “In order to constitute an accidental injury within the meaning of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury.” *Id.*, citing *Mendota Twp. High Sch. v. Indus. Comm’n*, 243 Ill. App. 3d 834, 837 (1993); *Caterpillar, Inc. v. Indus. Comm’n*, 228 Ill. App. 3d 288, 293 (1992). “Every natural consequence that flows from the injury which arose out of and in the course of the claimant’s employment is compensable under the Act, unless caused by an independent intervening accident.” *Id.* “An ‘independent intervening cause’ has been held to be one which breaks the chain of causation between a work-

related injury and an ensuing disability or injury.” *Int’l Harvester Co. v. Indus. Comm’n*, 56 Ill. 2d 84, citing *Shell Oil Co. v. Indus. Comm’n*, 2 Ill.2d 590, 595 (1954). “For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition.” *Global Prods. v. Ill. Workers’ Comp. Comm’n*, 392 Ill. App. 3d 408, 411 (2009), citing *Boatman v. Indus. Comm’n*, 256 Ill. App. 3d 1070, 1074 (1993).

In *Mendota Twp. High Sch. v. Indus. Comm’n*, 243 Ill. App. 3d 834 (1993), a science teacher and athletic coach injured his back during a basketball game. Approximately six months after the basketball incident, he suffered a ruptured disc during a sneezing episode. The Court found that the record revealed claimant’s initial back problems were triggered by the basketball accident and continued to escalate throughout the summer.

“The fact that other incidents, whether work related or not, may have aggravated his condition further are irrelevant as long as they do not constitute intervening causes. Claimant need only prove that some act or phase of his employment was *a* causative factor in the ensuing injury in order to recover benefits under the Act. He need not prove it was the sole causative factor, nor even that it was the principal causative factor of his injury.” *Mendota*, at 837.

In *Teska*, *supra*, the claimant sustained a herniated disk in his cervical spine due to lifting at work. After surgery and being released to regular work, claimant experienced a sharp pain in his neck radiating to his left arm while bowling in the third and final game in his bowling league. He sought treatment the next day for his increase in pain from his neck down his left arm. The Court reversed the Commission’s finding that the bowling accident was an intervening cause or accident, noting that the claimant’s condition would not have progressed to the point it did but for his original work-related accident. The Court noted he was already experiencing daily pain prior to the bowling incident. “Merely because claimant experienced an upsurge of neck pains while bowling a few months later does not mean the causal connection as broken.” *Teska*, at 742-743.

The imaging taken after the bowling incident was unchanged. The Court concluded that “Absent the initial injury, there would have been no recurrent disc defect and no condition which could have been aggravated by bowling.” *Teska*, at 743.

In *Vogel v. Ill. Workers’ Comp. Comm’n*, 354 Ill. App. 3d 780 (2005), the claimant injured his cervical spine at work before being involved in three automobile accidents, and the Commission initially found subsequent treatment unrelated. The Appellate Court highlighted the fact that there was “no evidence that the accidents changed the nature of the injury” and said it was an “inescapable conclusion” that the work-related injury remained a causative factor. *Vogel*, at 788-789. The Commission’s decision was ruled against the manifest weight of the evidence and the case remanded.

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The majority finds that a fall at home in June 2023, another fall in July 2023, and breaking up a fight in October 2023, were intervening accidents. However, the evidence does not show that her condition of ill-being after her falls at home, nor after breaking up the fight, was wholly unrelated to her November 11, 2022, work injury. At the time of these incidents, Petitioner was continuing to receive medical care for her lower back injury. Most notably, there is no objective evidence that suggests Petitioner suffered a materially worse lower back condition after these incidents, and no medical expert rendered an opinion to that effect.

In his report dated August 21, 2023, Section 12 Examiner Dr. Lami noted “There was an episode of a fall at home after which she had an MRI.” RX2. Dr. Lami records the July 24, 2023, MRI addendum by Dr. Heather Burbank: “It was noted that enthesopathic and discogenic endplate changes are not significantly changed compared to MRI from December 2022. Disc space height loss at L4-L5 and L5-S1 similar. There has been interval right laminotomy and discectomy since 2022.” *Id.* In his deposition testimony, Dr. Lami agreed that other than the herniation being resected at L5-S1, “the similar degenerative changes that we saw before at L4-5, L5-S1 and facet arthropathy as well as seeing the CAT scan from 2015 did persist.” RX4, p. 20-21.

Dr. Lami did not opine Petitioner’s condition worsened after her fall at home in June 2023. In fact, he recommended that she complete her remaining physical therapy sessions and advance to work conditioning. He opined that “This treatment is related to her alleged injury.” *Id.*

In his report dated December 13, 2023, Dr. Lami records as follows: “She reports she had a fall in October. She stated her brothers were in an altercation and as she was trying to get out of the way she fell. After she fell she had an x-ray. She reports low back pain with no radicular symptoms.” RX3. However, he does not reference this incident in any way in forming his opinion that Petitioner has reached maximum medical improvement for her work-related injury. Instead, after pronouncing her at MMI he states that: “She is neurologically intact. She no longer has radicular symptoms and her herniation has been resected.” *Id.*

After explaining why he does not believe a lumbar fusion would be beneficial for Petitioner regardless of causation, Dr. Lami states: “Nonetheless, she had another injury at home when she fell. This happened after her surgery and is not related to her alleged injury. Any future treatment performed on her degenerative spine is unrelated to the alleged injury.” *Id.* He does not opine that future treatment is related to the fall at home. Notably, he opines that “Her treatment has been reasonable and necessary.” He does not opine that treatment following her falls was unrelated, unreasonable, or unnecessary as a result of her work-related injury.

In his deposition testimony, Dr. Lami focuses on Petitioner’s obesity being the cause of her ongoing pain complaints.

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“Q. So if it was your patient and she had the microdiscectomy and she is still complaining of pain, how would you treat her? A. I would tell her to lose weight.

Q. Okay. That’s it. And anything else besides just losing weight?

A. No, exercise and lose weight. Just because you have a problem, it doesn’t mean there’s another procedure or surgery to correct it. She is over the ideal weight for her height and she has unrealistic pain complaints and expectations.” RX4, p. 29.

Notably, Dr. Lami is not saying that she still has this pain after her microdiscectomy because of unrelated falls, but because she is overweight and her pain generator has not been identified.

Petitioner’s medical records contradict the finding that the incident caused some new and independent injury to Petitioner’s lower back. They also directly contradict the following conclusion by the Arbitrator: “The Arbitrator finds the medical evidence indicating Petitioner’s condition had been improving before the unrelated incidents of falling. She had not felt the need to refill her prescriptions for pain medication and had a complete resolution of her sciatica pain.” Arb. Dec. p. 13.

Dr. Phillips’ record dated April 27, 2023, (prior to any falls) shows that she filled Hydrocodone 5 mg – acetaminophen 325 mg tablet on April 3, 2023, and cyclobenzaprine 10 mg tablet (generic for Flexeril) on April 7, 2023. PX4, p. 130-131. On April 27, 2023, Dr. Phillips renewed her prescriptions for tramadol and cyclobenzaprine. PX4, p. 133-134.

On May 31, 2023, Rush Physical Therapy recorded the following:

- “Pain is 6-7/10 when she sits for more than 30 min
- Sleeping hasn’t change much, wakes up once a night to take pain medicine – Is able to walk 30 min before pain increases” PX4, p. 219.

On June 12, 2023, Rush Physical Therapy recorded the following:

- “Needs to get up every 20 min to do light stretches to manage pain
- 30 min sitting leads to 7/10 pain, which she takes muscle relaxers for
- Can walk for 25 min before she needs to take a break
- Has not tried to bend or lift yet, but is eager to start
- Tried to help with groceries yesterday, but she dropped the bags
- Takes muscle relaxer, ibuprofen, tramadol/hydrocodone (sometimes), 2-3x a day
- Isn’t sleeping well: about 4 hours a night” PX4, p. 216.

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At her next visit with Dr. Phillips on June 20, 2023, approximately 3-1/2 months status post L5-S1 microdiscectomy, and prior to any falls, Petitioner rated her pain 6 out of 10. PX4, p. 127.

Since her last visit, she had filled Tramadol on May 2, 2023, ibuprofen 800 mg tablet on May 18, 2023, Lidocaine 5% topical patch on May 28, 2023, and cyclobenzaprine 10 mg tablet on May 31, 2023. PX4, p. 121 - 124..

She then saw Ms. Christine Johnroe, PA-C, on June 27, 2023, reporting a fall forward two days prior when her leg gave out while walking with 8 out of 10 pain. PX4, p. 119.. X-rays on this date demonstrated advanced degeneration at L5-S1 with severe disk space collapse and osteophyte formation. PX4, p. 111.. It was decided to delay her start of work conditioning. In addressing this fall, Dr. Phillips testified:

“And, yes, when she lurched her back, it seemed to make it worse. But it made already present back pain, which for the reasons we’ve discussed I attribute to the injury, perhaps made it worse with that lurching incident, but it was already there and documented in the visit prior. So it wouldn’t really change my opinion that the ultimate need for the fusion I’ve recommended would still be attributed back to the injury.”

PX7, p. 17.

On July 18, 2023, Petitioner reported to Dr. Phillips that she has good days and bad days with her back, which she rated up to 8 out of 10. PX4, p. 111. She was taking Ibuprofen, Tramadol, and Flexeril. She was working light duty. Dr. Phillips reviewed the July 11, 2023, lumbar spine MRI, testifying it “showed disc space narrowing again and modic changes, which is basically bruising in the bone on either side of the disc because you don’t have a good shock absorber there.” PX7, p. 12. Dr. Phillips prescribed a Medrol Dosepak for the acute flare-up of pain and continued her on light duty restrictions. PX4, p. 112.

Petitioner presented for an Initial Evaluation at Athletico Physical Therapy on July 20, 2023, with 4 out of 10 pain. She noted some relief of her symptoms when standing up and extending her back. PX4, p. 202 – 203. She was taking muscle relaxers to help with her symptoms while undergoing physical therapy. PX4, p. 198. She then refilled her cyclobenzaprine on July 24, 2023. PX4, p. 252. The Functional Status Report dated August 17, 2023, states: “Pt reports she is in pain every day, but has good days and bad days. States pain is across her low back, mostly in the center...” PX4, p. 188. Pain rating was 5-10 out of 10. *Id.* When Petitioner was discharged from physical therapy and transitioned into work conditioning on August 28, 2023, she continued to report back pain from 5-9 out of 10. PX4, p. 183.

The Work Conditioning Functional Status Report dated September 25, 2023, prior the altercation with her brothers, indicated:

- “Client does NOT demonstrate the physical capabilities and tolerances to perform all the essential job functions of the job.”
- “Client demonstrated an 18# lift to waist and shoulder height and a 15# lift overhead.”
- “Client has made some progress in material handling tolerances. She continues to be very limited by fear avoidance and pain with lumbar.”
- She had last taken Tramadol approximately two weeks ago, had last taken Hydrocodone last week, and was taking ibuprofen and cyclobenzaprine “BID”, or two times per day.
- “Client reports she has difficulty with bending forward and she can’t walk for long periods of time without her back stiffening up. Client states she has difficulty walking through the grocery store and can’t lift more than 10#.”
- “The client reports the lowest functional pain score in last 30 days is 4/10, worst functional pain score in last 30 days is 7/10, and current functional pain score is 5/10.” PX4, p. 171 – 173.

When Petitioner followed-up with Dr. Phillips on October 17, 2023, she continued to complain of severe back pain that was worse when she sat, and excellent relief when she extended her lumbar spine. PX4, p. 266. She rated her pain 6 out of 10. She was continuing to take Ibuprofen and muscle relaxants. She reported to Dr. Phillips that her right ankle was injured in an altercation, with no reference to any change in her lower back symptoms. *Id.* Dr. Phillips felt that her pain was likely related to advanced degeneration at L5-S1, stating, “Her extension preference would certainly support this.” *Id.* He indicated she would likely be a candidate for a fusion at L5S1, but wanted her to finish work conditioning and progress towards the level of her job requirements. She was released to return to work with a 15-pound lifting restriction. *Id.*

Petitioner followed-up with Dr. Phillips on November 21, 2023, wherein he noted:

“She is currently working light duty. She continues to complain of severe axial back pain, worse with flexion, somewhat relieved with extension, suggesting a discogenic basis for this. Her preoperative radiculopathy has completely resolved since the L5-S1 microdiscectomy in March. She rates her back pain as 6 or 7/10. She continues to take tramadol, ibuprofen and cyclobenzaprine.” PX4, p. 257.

X-rays again confirmed disk space collapse at L5-S1 with osteophyte formation and vacuum disk phenomenon. PX4, p. 257. Dr. Phillips made the following assessment:

“She obviously has advanced degenerative changes at L5-S1 level, the level of the disk herniation, which was work-related. The radicular pain as expected is resolved with the diskectomy; however, her back pain remains persistent. Although the degeneration at this level is a preexisting findings [sic], she was

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asymptomatic and clearly with a herniation at this level the increased back pain, since would be reflective of the work-related injury, aggravating her condition.”

Id.

Dr. Phillips recommended proceeding with L5-S1 fusion surgery.

On the same date, Dr. Phillips also wrote a letter to the adjuster in further support of his opinions, stating,

“As is documented in her medical record, she had a work-related disk herniation. After discectomy surgery she has good resolution of her radiculopathy. She, however, has persistent back pain, not unexpected as a consequence of the disk injury she suffered for which she will [sic] required decompressive surgery to relieve her radicular complaints. She has no prior history of low back pain and overwhelmingly likely her back pain was a consequence of the disk injury she suffered in the work-related injury.” PX4, p. 259.

The medical records show that following her microdiscectomy on March 9, 2023, and before the alleged falls or altercation, Petitioner was consistently complaining of 6 out of 10 pain, relieved by extension. Petitioner was also able to return to work light duty despite these alleged incidents. Contrary to the Arbitrator’s assertion, she continued to take prescribed medications to relieve her pain and there was no appreciable worsening of her condition following these incidents. While Dr. Phillips had not recommended the fusion surgery prior to the alleged incidents, it is important to note the imaging was unchanged and the fusion surgery is meant to treat the disk space collapse present at L5-S1, the level injured in the work injury.

As the record is devoid of any medical opinion that there was an intervening accident that broke the causal chain, nor any medical evidence that show a material change in the nature of her condition, I dissent and would find that Petitioner proved her condition of ill-being is causally related to her accident on November 11, 2022.

/s/ Amylee H. Simonovich

Amylee H. Simonovich

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC002478
Case Name	Vantreace Anderson v. Aperion Care
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Efi James, Arbitrator

Petitioner Attorney	Steven Seidman
Respondent Attorney	Patrick Morris

DATE FILED: 4/10/2025

/s/ Efi James, Arbitrator

Signature

INTEREST RATE WEEK OF APRIL 8 2025 4.00%

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)

Vantreace Anderson

Employee/Petitioner

v.

Aperion Care

Employer/Respondent

Case # **23 WC 02478**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Efi Pozziopoulos James**, Arbitrator of the Commission, in the city of **Chicago**, on **January 9, 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, **11/11/22**, 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 not* causally related to the accident.

In the year preceding the injury, Petitioner earned N/A; the average weekly wage was N/A.*

On the date of accident, Petitioner was **42** years of age, *married* with **6** dependent children.

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

Respondent shall be given a credit of \$7,704.38 for TTD, N/A for TPD, N/A for maintenance, and \$56,866.58 for other benefits (Medical Bills), for a total credit of \$64,570.96.

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

ORDER

Prospective medical treatment is denied.

Respondent shall pay reasonable and necessary medical services, pursuant to the Medical Fee Schedule through January 9, 2025 pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for all medical benefits that were previously paid on Petitioner's behalf.

**The parties have chosen to defer the issue of Petitioner's AWW and benefit rates to a later date.*

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 10 2025

[illegible]

ILLINOIS WORKERS' COMPENSATION COMMISSION

Vantreace Anderson,)
)
 Petitioner,)
)
 v.)
) Case No. 23 WC 002478
 Aperion Care)
)
)
 Respondent.)

FINDINGS OF FACT

This matter proceeded to hearing on January 9, 2025, in Chicago, Illinois before Arbitrator Efi Pozziopoulos James on Petitioner's Petition for Immediate Hearing under Sections 19(b) and 8(a). The issues in dispute were Causation, Medical, Earnings and Prospective Medical Care. Arbitrator's Exhibit 1. (AX 1)

Job Duties

Vantreace Anderson testified that she was employed as a dietary aide for Aperion Care of Lincolnwood, and she has held this job since October 2017. (Tr. 11–13) Petitioner’s job requires her to take carts of food upstairs and put the food on plates, so the CNAs can take the plates of food to the residents in their rooms. (Tr. 12) Petitioner is then required to go back and get the cart full of dirty dishes and take it to the dish room and unload it. *Id.* Petitioner testified she was working 8-hour days. (Tr. 12)

Prior Medical Condition

Petitioner acknowledged previously having low back pain in 2011, treatment for a slipped disc with three spinal injections, as well as pelvic surgery in 1999. At the time of the accident at issue, Petitioner was working full duty for Aperion. (Tr. 12-13)

Accident

On November 11, 2022, at approximately 2:30pm, Petitioner was leaving the kitchen at work. (Tr. 13; PX 2, p. 101) As she walked out the kitchen door, Petitioner slipped and fell in a puddle of water. (Tr 13; PX 2, p. 101) Petitioner tried unsuccessfully to get up, but fell three to five more times. (Tr. 14) She finally got back up by crawling up on the wall. (Tr. 14) Over the next five days, Petitioner felt pain in her lower back radiating down her right leg. (Tr. 14-15)

Summary of Medical Records

On November 16, 2022, Petitioner sought initial medical care at Concentra for complaints of pain in her lower back, pain in her right tail bone, pain in her right rear thigh, and pain in her right calf. She reported pain of 7/10 across her lower back near her waistline, shooting down her right leg from the hip. (PX 2, p. 104) She stated that on November 11, 2022, she slipped on a puddle of water at work and fell backwards onto her back. On physical examination, Petitioner was able to bend and twist at the waist, but with pain. (PX 2, p. 104) She was observed walking with a limp, and reported feeling more comfortable sitting. (PX 2; p. 104) Petitioner reported that bending was a requirement of her regular work duties. (PX 2; p. 104) X-rays of the lumbar spine revealed moderate to severe L5-S1 degenerative changes and previous pubic symphysis ORIF. Petitioner was diagnosed with low back and right leg pain, and a lumbar MRI and a course of physical therapy were ordered. Petitioner was instructed to remain off work and to take pain and anti-inflammatory medication. (PX 2, p. 105)

On November 18, 2022, Petitioner returned to Concentra with continued pain in her back and right lower extremity. (PX 2, p. 75) She was taken off work for 3 days to be followed by light duty work, and was referred to physical therapy. (PX 2, p. 76)

Petitioner attended physical therapy at Concentra from November 21, 2022, through November 28, 2022, completing a total of three sessions. (PX 2) Petitioner continued to present with back pain and right leg pain while in physical therapy.

On December 2, 2022, Petitioner underwent a non-contrast MRI of her lumbar spine at SimonMed which revealed a right posterior lateral herniation of the disc at L5-S1 with caudal migration, compressing the descending right S1 nerve root of her spinal cord. (PX 3, p. 4)

Petitioner returned to Concentra on December 5, 2022, with complaints of low back pain, greater on the right side and radiating down into her right calf. (PX 2, p. 24) Her back pain was noted to be unchanged. (PX 2, p. 24) Upon physical examination, Petitioner had a positive right straight leg raise test. (PX 2, p. 25) Her lumbosacral spine demonstrated flexion active range of motion of only 45 degrees, extension active range of motion of only 10 degrees, left thoracolumbar side bending active range of motion of only 15 degrees, and right thoracolumbar side bending active range of motion of only 20 degrees. (PX 2, p. 25) Petitioner was diagnosed with disc disorder of the lumbar region, compression of sacral nerve root, pain in the back and right lower extremity, and back contusion on the right. Petitioner's work restrictions were modified to reflect no lifting greater than 3 lbs. and primarily seated work for four hours per day. (PX 2, p. 26) Petitioner was referred to a neurosurgeon for further treatment. (PX 2, p. 10)

On December 15, 2022, Petitioner began treatment with Dr. Phillips. (PX 4) She stated that she had injured her low back about six weeks prior when she fell at work. (PX 4, p. 16) She complained of mostly right leg radicular pain. Petitioner rated her pain 8/10. X-rays revealed moderate to severe L5-S1 disc degenerative changes. Dr. Phillips also noted the MRI results as showing disc space narrowing with changes at L5-S1. (PX 4, p. 16-17) He stated that, proximally, the discs were pristine, but on the axial view there was a large, extruded disc herniation migrated distally with severe compression of the right S1 nerve root. (PX 4, p. 17) Petitioner was diagnosed with a disc herniation at L5-S1.

Upon physical examination, Petitioner had a markedly positive straight leg raise test, markedly limited lumbar range of motion with reproduction of sciatic symptoms, and inability to heel walk, toe walk, or sit on her right side due to severe right leg radiculopathy. (PX 4, p. 17) Dr. Phillips diagnosed Petitioner with severe sciatica with a right L5-S1 herniated disk and noted that had not responded to therapy, which aggravated her symptoms.

(PX 4, p. 17) Dr. Phillips recommended that Petitioner either undergo an epidural or undergo a microdiscectomy surgery. Petitioner was authorized to remain off work. (PX 4, p. 17)

On March 9, 2023, Dr. Phillips performed a microdiscectomy on Petitioner at Gold Coast SurgiCenter. (PX 6, p. 56) He positioned Petitioner prone on a Jackson spinal frame, prepped and draped the lower back, then cut an incision overlying the right L5-S1 interlaminar window under fluoroscopy. Dr. Phillips then cleared soft tissue from the edges of the interlaminar window and, using a bur, removed the caudal edge of the L5 lamina, exposing ligamentum. Dr. Phillips penetrated the ligamentum with a microcurette and removed it laterally, exposing the S1 nerve root. (PX 6, p. 56)

Dr. Phillips noted that the S1 nerve root was “tented” over disk osteophyte material. He passed an angled elevator distally beneath the nerve root, then freed and removed a number of loose, extruded fragments of Petitioner’s L5-S1 spinal disk. He then stabbed the L5-S1 disk with a 15 blade, incised it, and removed disk material from immediately beneath the takeoff of the S1 nerve root. (PX 6, p. 56)

Noting no further stenosis, Dr. Phillips irrigated the wound, infiltrated the area around the neural elements with a steroid solution, sutured the fascia back together, put the subcutaneous tissue and skin back into place, and applied a sterile dressing. Both pre-operatively and post-operatively, Dr. Phillips diagnosed Petitioner with a right-sided L5-S1 herniated nucleus pulposus. (PX 6, p. 56)

Petitioner testified that the surgery resolved the radicular pain down her right leg. (Tr. 27)

Petitioner was seen by Dr. Phillips on March 28, 2023, via telehealth. She reported having mild back discomfort with prolonged standing and walking. She was taking Norco and Flexeril as needed, but she declined medication refills. Dr. Phillips assessed that overall Petitioner was recovering well. Petitioner was instructed to remain off work and to follow up in four weeks at which time Dr. Phillips would consider having Petitioner begin physical therapy. (PX 4, p. 142)

On April 26, 2023, Petitioner reported low back pain at 7/10 severity with no radiation into her right leg. (PX 4, p. 99) On April 27, 2023, Petitioner followed up with Dr Phillips. She denied any right leg radicular pain, but did complain of some residual low back discomfort. Dr. Phillips noted that the incision was healing well, and recommended initiating physical therapy and returning in six weeks for recheck. In the interim, Dr. Phillips opined that Petitioner could work sedentary duty. (PX 4, p.135)

On May 5, 2023, Petitioner began physical therapy at Rush, where she complained of intermittent lower back pain at 9/10 when at its worst. (PX 4, p. 221) Petitioner reported that she was 8 weeks post-discectomy surgery and that her radicular symptoms had almost completely resolved with that surgery, but that she still had low back pain and limited lumbar range of motion. (PX 4, p. 221) Upon physical examination, Petitioner was observed to have limited lumbosacral range of motion, limited strength, and lumbar pain with activities of daily living. (PX 4, p. 221-222)

On June 20, 2023, Dr. Phillips noted that Petitioner “had complete resolution of her sciatic pain” with microdiscectomy. (PX 4, p. 93) He also noted that although Petitioner had no radicular pain, she did have back pain which she rated 6/10. Dr. Phillips ordered a course of work hardening. Work restrictions were modified to reflect no lifting greater than 20 lbs. and no carrying more than 10 lbs. (PX 4, p. 93)

During an office visit with Dr. Philips on June 27, 2023, Petitioner stated that she was walking two days prior when her left leg gave out and she fell forward. She reported that her low back pain had increased to 8/10. (PX 4, p. 119) X-rays were ordered that showed maintained lordosis but a loss of disk height at L5-S1. (PX 4, p.

119) Dr. Phillips authorized Petitioner to remain off work until July 8, 2023 and noted that if her back pain persisted, Petitioner should have an updated lumbar MRI. (PX 4, p. 119)

On July 5, 2023, Petitioner's work restrictions were reinstated to no lifting greater than 20 lbs. and no carrying greater than 10 lbs. Due to Petitioner's ongoing low back pain complaints, an updated MRI of the lumbar spine was ordered. (PX 4)

An MRI of lumbar spine without contrast was done on July 11, 2023, and with contrast on July 17, 2023. The July 11, 2023 study without contrast revealed L5-S1 enthesopathy; degenerative disc and degenerative joint disease; and material within the interior epidural space to the right of midline reflecting residual/recurrent right paracentral disc herniation or post-surgical granulation tissue. The lumbar MRI with contrast on July 17, 2023, revealed enhancing granulation tissue in the posterior paraspinal muscles on the right, extending into the laminectomy defect and right lateral recess surrounding the descending right S1 nerve root; and a small non-enhancing central disc herniation at L5-S1 producing minimal mass effect on the ventral thecal sac which did not clearly contact the descending S1 nerve root. (PX 3)

On July 18, 2023, Dr. Phillips reviewed the MRI studies and noted some scar tissue, but no evidence of recurrent disk herniation or neural compressive pathology. Upon physical examination, Dr. Phillips noted that Petitioner's lumbar range of motion was limited by axial back pain. (PX 4, p. 111) He opined that there was no structural injury as such, but that Petitioner's degenerative condition in her lumbar spine had been rendered symptomatic. (PX 4, p. 112) Dr. Phillips diagnosed Petitioner with a prolapsed lumbar intravertebral disc, and he recommended a course of physical therapy followed by a work conditioning program. Work restrictions were unchanged. (PX 4, p. 112)

On July 20, 2023, Petitioner began physical therapy evaluation at Athletico. (PX 4, p. 182) Petitioner underwent a functional status evaluation at Athletico on July 31, 2023. She stated that she had done a lot of walking in the grocery store and sitting at the laundry mat over the previous weekend, but she had taken a muscle relaxer the night before the study which helped alleviate her symptoms. According to the evaluating physical therapist, Petitioner had made steady progress over the last six physical therapy appointments. She put forth a good effort during physical therapy sessions, but she did present with fear of movement, especially with activities including lumbar flexion. Ongoing physical therapy was recommended. (PX 5)

On July 24, 2023, a lumbar MRI addendum report was prepared, which stated that enthesopathic and discogenic endplate changes were not significantly changed as compared to the MRI from December 2022. Loss of disc space height at L4-5 and L5-S1 appeared to be similar, and lumbar facet joint degeneration was also similar in appearance. The study also noted that there had been interval right hemilaminectomy and discectomy since the 2022 study with the enhancing granulation tissue described as a new finding as compared to the previous study. (PX 4)

On August 2, 2023, Petitioner stated that she felt pretty good, but she mentioned the day before this office visit, she was having left hip pain and kept feeling like her hip was doing to give out. Marked tenderness to palpation was noted over left iliopsoas and distal hip flexors. An August 9, 2023, progress note stated that Petitioner continued to make progress in physical therapy. During a re-evaluation on August 17, 2023, Petitioner continued to complain of low back and left hip pain. Petitioner was discharged from physical therapy on August 28, 2023, after completing 18 therapy sessions, with recommendations to transition to work conditioning. (PX 5)

Petitioner started work conditioning on August 30, 2023. During the initial evaluation, it was noted that Petitioner met 20% of reported job demands required to function as a dietary aide. According to the evaluating therapist, the job required lifting and carrying up to 50 lbs. (PX 5)

As of September 25, 2023, Petitioner had completed 11 work conditioning appointments with two cancellations. Petitioner demonstrated the ability to lift 18 lbs. to waist, and 15 lbs. overhead. Petitioner continued with work conditioning through October 4, 2023, and reported feeling good. (PX 5)

At trial, Petitioner confirmed that she had been involved in an incident at home in October 2023 when her brothers got into a physical altercation and she got between them to try to break up the fight. (Tr. 23; 29-30) During the altercation one of her brothers grabbed her and forcefully flung her to the side and she fell onto the couch. *Id.*

On October 17, 2023, Dr. Phillips noted that Petitioner had recently been involved in an “*altercation*.” She complained of back pain which she rated at 6/10 and right ankle pain. Dr. Phillips noted that the postoperative MRI showed no recurrent disk herniation, but Petitioner did have degeneration at the L5-S1 level. Dr. Phillips recommended progressing her work conditioning program toward the level of her job requirements and placed Petitioner on 15 lbs. lifting restriction. Dr. Phillips also stated that Petitioner might be a candidate for lumbar fusion surgery at the L5-S1 level. (PX 4)

At trial, Petitioner admitted that Dr. Phillips did not make the recommendation for lumbar fusion surgery until approximately one month after she attempted to break up the fight between her brothers. (Tr. 30)

On November 8, 2023, Petitioner was discharged from work conditioning due to lack of progress toward program goals. (PX 5, p.162) During her final evaluation, she was still able to meet only 2 out of 10 job duties, citing pain when being asked to bend over and pick things up. (PX 5, p. 154) She reported lower back pain at 6/10 over the past 30 days, her worst pain score had been 7/10 and her best has been 4/10. (PX 5, p. 157)

Petitioner returned to Dr. Phillips on November 21, 2023. (PX 4, p. 257) She reported continued, severe axial back pain at 6-7/10. (PX 4, p. 257) Upon physical examination, Dr. Phillips noted that Petitioner had minimal flexion which immediately reproduced her axial back pain. (PX4 257.) Dr. Phillips noted that Petitioner had advanced degenerative changes at [the] L5-S1 level, the level of the disk herniation, which was work-related. Dr. Phillips opined that since the work injury, Petitioner had a flare-up of both back and radicular pain related to the herniation. The radicular pain as expected was resolved with the discectomy; however, her back pain remained persistent. (PX 4, p. 257) He wrote that although the disk degeneration was a preexisting finding, she was asymptomatic before the work accident, whereas after the accident she had a disk herniation and increased back pain reflective of aggravation from the work injury. (PX 4, p. 257)

Dr. Phillips offered Petitioner two treatment options: he could declare her at MMI and offer her an FCE, or she could undergo an L5-S1 fusion surgery, which he opined would be “quite reasonable given her clinical presentation.” (PX 4, p. 257) Petitioner stated that she could not live with the pain and wished to proceed with the fusion surgery. (PX 4, p. 257-258)

Section 12 Examination with Dr. Babak Lami on January 20, 2023

On January 20, 2023, Petitioner underwent a Section 12 evaluation with Dr. Babak Lami. (RX 1) Petitioner gave a history of falling at work on November 11, 2022 and then falling again when trying to get back up. (RX 1, p. 1) She reported pain at 9/10 “in her back radiating down the right leg.” (RX 1, p. 1) Upon physical examination, Dr. Lami noted that Petitioner had significant difficulty with maneuvers as well as a positive

straight leg raise test. (RX 1, p. 2) Dr. Lami diagnosed Petitioner with a right L5-S1 disc herniation with right-sided radiculopathy. (RX 1, p. 3) He opined that her condition was causally related to her work accident and specifically noted that the medical records failed to show Petitioner was having lumbar radiculopathy on the right side prior to the alleged injury in question. (RX 1, p. 3) He opined that Petitioner was a candidate for either a lumbar epidural injection and/or a right-sided microdiscectomy procedure; he agreed with Dr. Phillips's recommendations. (RX 1, p. 3-4)

Section 12 Examination with Dr. Babak Lami on August 21, 2023

On August 21, 2023, Petitioner underwent a second Section 12 exam with Dr. Lami. He noted that Petitioner had an unrelated fall at home followed by a repeat lumbar MRI. According to Dr. Lami, the MRI without contrast on July 11, 2023, and with contrast on July 17, 2023, showed no significant spinal stenosis or recurrent disc herniation. He recommended that Petitioner complete six additional physical therapy sessions followed by a 3 to 4-week course of work conditioning. (RX 2)

Section 12 Examination with Dr. Babak Lami on December 13, 2023

On December 13, 2023, Petitioner underwent a third Section 12 exam examination with Dr. Lami. He opined that Petitioner is not a candidate for lumbar fusion surgery. He recommended a return to full duty work, and placed Petitioner at MMI. (RX 3)

Evidence Deposition of Dr. Babak Lami on July 2, 2024

Dr. Lami testified via evidence deposition on July 2, 2024. (RX 4) He noted that he had examined Petitioner on three separate occasions, i.e., January 20, 2023, August 21, 2023, and December 13, 2023. (RX 4, p. 8-9) In reference to the examination on January 20, 2023, Dr. Lami testified that he reviewed the results of a CT scan of Petitioner's lumbar spine from May 29, 2015, prior to the alleged work accident. The study revealed degenerative changes at multiple levels including L5-S1. (RX 4, p. 12) Dr. Lami diagnosed Petitioner with right L5-S1 disc herniation with right-sided radiculopathy, and he voiced his concurrence with the recommendation of Dr. Phillips for right L5-S1 microdiscectomy surgery. (RX 4, p. 16)

Pursuant to the second Section 12 examination on August 21, 2023, Dr. Lami testified that Petitioner's radicular symptoms had completely resolved. (RX 4, p.17) Dr. Lami testified that he had reviewed the results of the repeat lumbar MRI from July 2023, and noted that the disc herniation at L5-S1 had been resected. (RX 4, p. 20) As of August 21, 2023, Dr. Lami diagnosed Petitioner as status-post L5-S1 microdiscectomy with complete resolution of her radicular symptoms. (RX 4, p. 21)

When Dr. Lami examined Petitioner on December 13, 2023, he noted that she had been working light duty for Respondent. (RX 4, p. 23) Of note, Petitioner advised Dr. Lami that she had fallen in October 2023 while trying to stop her brothers who were involved in a physical altercation. *Id.* According to Dr. Lami, Petitioner complained of increased back pain after the October 2023 incident which she rated at 8/10. (RX 4, p. 24) Dr. Lami opined that Petitioner could work full duty with no restrictions, which he understood as requiring the ability to occasionally lift and carry up to 25 lbs. with occasional bending, sitting, and standing and frequent reaching. (RX 4, p. 25) According to Dr. Lami, when he reviewed the results of the repeat lumbar MRI from July 2023, the L5-S1 disc herniation had been completely resected, and he did not see any postoperative or surgical complications. (RX 4, p. 27) Dr. Lami opined that spinal fusion surgery would not improve Petitioner's physical abilities. *Id.* He testified that if Petitioner was his patient, he would instruct her to lose weight, engage in an exercise program, and stop smoking. (RX 4, p. 28-29) Dr. Lami testified that one of the reasons that he did not believe that lumbar fusion surgery would improve Petitioner's condition is that her pain generator could not

be properly identified as the L5-S1 level. (RX 4, p. 31) According to Dr. Lami, Petitioner had multilevel degenerative changes and facet arthropathy. (RX 4, p. 31-32) He also noted that the lumbar MRI from July 2023 showed no new structural changes which were not shown on the prior study. (RX 4, p. 35)

Evidence Deposition of Dr. Phillips on August 27, 2024

On August 27, 2024, Dr. Phillips testified at an evidence deposition. (PX 7) Dr. Phillips is a board-certified orthopedic surgeon and has been practicing orthopedic surgery for 30 years. (PX 7, p. 6) Dr. Phillips specializes in managing spinal disorders. (PX 7, p. 6)

Dr. Phillips testified that he first saw Petitioner on December 15, 2022. (PX 7, p. 8) Petitioner reported a history of back pain with a prior epidural back in 2011, but had no symptoms prior to her injury on November 11, 2022. (PX 7, p. 9) During her visit on December 15, 2022, Dr. Phillips testified that she was “completely miserable with sciatica, really nonfunctional. She had a very big herniation on the MRI.” (PX 7, p. 9-10)

Dr. Phillips testified that Petitioner was having low back pain from an injured, worn-out disc. (PX 7, p.13) He testified that she was a straightforward patient with no symptom magnification or malingering, she simply suffered from horrible back pain. (PX 7, p. 15)

Dr. Phillips testified that Petitioner’s work accident was a cause or contributing factor to her need for a fusion surgery. (PX 7, p. 13) Before the accident at issue, Petitioner was not experiencing any back pain or leg pain, but after the accident, she suffered from persistent back pain with a large chunk of her disc at L5-S1 herniating outward. (PX 7, p. 13-14) Although she had some degeneration in her spine, she was asymptomatic leading up to the accident. (PX 7, p. 14) Dr. Phillips testified that the large disc herniation was as a result of the accident. (PX 7, p. 14)

Dr. Phillips further testified that although Petitioner’s microdiscectomy surgery did resolve her sciatic pain, her sciatica was only a part of the issue in her lower back. Dr. Phillips opined that “when you have a herniated disc, aside from the sciatica it implies an injury to the substance of the disc itself. It's obviously lost material. It's sort of worn out.” He felt her back pain was classic for discogenic back pain coming from an injured disc. He noted that discogenic back pain is separate from sciatic pain, or nerve pain from pressure on the disc. He felt Petitioner’s pain was severe and relentless and they discussed possible fusion surgery to address the bone-on-bone disc being worn out with back pain. (PX 7, p. 11)

Dr. Phillips testified that when he said that Petitioner was doing well after her microdiscectomy, he was speaking in terms of the particular aims of that surgery: namely, resolving her sciatica. (PX 7, p. 16-17) Dr. Phillips testified that unlike her sciatica, Petitioner’s low back pain had not gone away post-discectomy. To the contrary, Dr. Phillips cited Petitioner’s report of low back pain at 6 out of 10 during her June visit, prior to the incident where she “lurched” her back at home. (PX 7, p. 17) The pain was already there, and so the lurching incident did not change his causal connection opinion. (PX 7, p. 17) He testified that a spinal fusion at L5-S1 is the only real option remaining to Petitioner for addressing her axial lower back pain. (PX 7, p. 15)

Petitioner’s Current Condition

At trial, Petitioner testified that she had good days and bad days regarding her low back condition with sharp pain ranging from 5/10 to 7-10/10. (Tr. 19-20) She confirmed that she continued to work accommodated light duty for Respondent, which consisted of rolling silverware sets with knives, forks, and spoons for the residences for breakfast, lunch, and dinner, and rolling a cart around the facility to distribute the silverware. (Tr. 19-21) Petitioner also testified that she would occasionally make copies on the copy machine for her boss. (Tr. 21)

Petitioner testified that she cannot reach down and touch her toes because of her back pain. (Tr. 20) She testified that she takes Ibuprofen, muscle relaxers and hydrocodone on a daily basis to manage her symptoms. (Tr. 24) She has taken these consistently since her microdiscectomy. (Tr. 25) Petitioner testified that if the fusion surgery for her lumbar spine were authorized, she would undergo it. (Tr. 24)

CONCLUSIONS OF LAW

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

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

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

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

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

“Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence... The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result.” Navistar International Transportation Corp. v. Industrial Comm'n, 331 Ill.App.3d 405, 415 (2002)

Every natural consequence that flows from an injury that arose out of and in the course of one's employment is compensable under the Act absent the occurrence of an independent intervening accident that breaks the chain of causation between the work-related injury and an ensuing disability or injury. Vogel, 354 Ill. App. 3d at 786; Teska v. Industrial Comm'n, 266 Ill. App. 3d 740, 742, 640 N.E.2d 1, 203 Ill. Dec. 574 (1994). Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred "but for" the original injury. International Harvester Co. v. Industrial Comm'n, 46 Ill. 2d 238, 245, 263 N.E.2d 49 (1970).

The Arbitrator finds that Petitioner's current condition of ill-being is not causally related to her work accident on November 11, 2022. On that date, Petitioner was leaving the kitchen at work when slipped and fell in a puddle of water. Petitioner tried unsuccessfully to get up, but fell three to five more times. Over the next five days, Petitioner felt pain in her lower back radiating down her right leg. Petitioner then underwent a course of treatment that was reasonable, related and necessary including right L5-S1 microdiscectomy which was performed by Dr. Phillips on March 9, 2023.

Petitioner reported that she had mild back discomfort after the surgery but she testified that the surgery resolved the radicular pain down her right leg. Approximately three weeks after the surgery, Petitioner was taking Norco and Flexeril as needed but declined medication refills. Dr. Phillips assessed that overall Petitioner was recovering well.

Eight weeks post-surgery, Petitioner reported that her radicular symptoms had almost completely resolved with the surgery, but that she still had low back pain and limited lumbar range of motion. On June 20, 2023, Dr. Phillips noted that Petitioner “had complete resolution of her sciatic pain” with microdiscectomy and noted that although Petitioner had no radicular pain, she did have back pain which she rated 6/10. Dr. Phillips ordered a course of work hardening and work restrictions were given.

On June 27, 2023, Petitioner reported to Dr. Phillips that she was walking two days prior when her left leg gave out and she fell forward. She reported that her low back pain had increased to 8/10. At that time, Dr. Phillips authorized Petitioner to remain off work and noted that if her back pain persisted, Petitioner should have an updated lumbar MRI. The Arbitrator notes that a repeat MRI was not ordered until Petitioner had a non-work-related fall while walking.

The repeat MRI was reviewed by Dr. Phillips who found no evidence of recurrent disk herniation or neural compressive pathology. He opined that there was no structural injury as such, but that Petitioner's degenerative condition in her lumbar spine had been rendered symptomatic. It is important to note that Dr. Phillips opinion that Petitioner's degenerative condition had been rendered symptomatic came after the fall while walking.

On August 2, 2023, Petitioner stated that she felt pretty good, but she mentioned the day before this office visit, she was having left hip pain and kept feeling like her hip was doing to give out. The Arbitrator has reviewed the medical records and Petitioner's initial work injury did not involve the hip.

Additionally, Petitioner confirmed that she had been involved in an incident at home in October 2023 when her brothers got into a physical altercation and she got between them to try to break up the fight. During the altercation one of her brothers grabbed her and forcefully flung her to the side and she fell onto the couch. She was seen by Dr. Phillips after the altercation where Petitioner complained of back pain which she rated at 6/10 and right ankle pain. The Arbitrator notes that the mention of a new ankle injury after the altercation at home is indicative of a new and intervening event in the course of Petitioner's history of injury. It was only this after physical altercation at home that Dr. Phillips opined Petitioner might be a candidate for lumbar fusion surgery at the L5-S1 level. At trial, Petitioner also admitted that Dr. Phillips did not make the recommendation for lumbar fusion surgery until approximately one month after she attempted to break up the fight between her brothers.

Dr. Lami, Respondent's Section 12 Examiner, testified via evidence deposition on July 2, 2024. In reference to the examination on January 20, 2023, Dr. Lami diagnosed Petitioner with right L5-S1 disc herniation with right-sided radiculopathy, and he concurred with the recommendation of Dr. Phillips for right L5-S1 microdiscectomy surgery. Pursuant to the second Section 12 examination on August 21, 2023, Dr. Lami noted that Petitioner's radicular symptoms had completely resolved. He reviewed the results of the repeat lumbar MRI from July 2023 and he noted that the disc herniation at L5-S1 had been resected. As of August 21, 2023, Dr. Lami diagnosed Petitioner as status-post L5-S1 microdiscectomy with complete resolution of her radicular symptoms. When Dr. Lami examined Petitioner on December 13, 2023, he noted that she had been working light duty for Respondent. Of note, Petitioner advised Dr. Lami that she had fallen in October 2023 while trying to stop her brothers who were involved in a physical altercation. According to Dr. Lami, Petitioner complained of increased back pain after the October 2023 incident which she rated at 8/10. Dr. Lami opined that Petitioner could work full duty with no restrictions, which he understood as requiring the ability to occasionally lift and carry up to 25 lbs. with occasional bending, sitting, and standing and frequent reaching. According to Dr. Lami, when he reviewed the results of the repeat lumbar MRI from July 2023 and he did not see any postoperative or surgical complications. Dr. Lami opined that spinal fusion surgery would not improve Petitioner's physical abilities. He testified that if Petitioner was his patient, he would instruct her to lose weight, engage in an exercise program, and stop smoking. Dr. Lami testified that one of the reasons that he did not believe that lumbar fusion surgery would improve Petitioner's condition is that her pain generator could not be properly identified as the L5-S1 level. According to Dr. Lami, Petitioner had multilevel degenerative changes and facet arthropathy. He also noted that the lumbar MRI from July 2023 showed no new structural changes which were not shown on the prior study.

The Arbitrator takes note of Dr. Phillips' testimony that Petitioner's work accident was a cause or contributing factor to her need for a fusion surgery. He noted that before the accident at issue, Petitioner was not experiencing any back pain or leg pain, but after the accident, she suffered from persistent back pain with a large chunk of her disc at L5-S1 herniating outward. In other words, although she had some degeneration in her spine, she was asymptomatic leading up to the accident. The Arbitrator finds the opinions of Dr. Lami more credible than those of Dr. Phillips. The Arbitrator finds the medical evidence indicating Petitioner's condition had been improving before the unrelated incidents of falling. She had not felt the need to refill her prescriptions for pain medication and had complete resolution of her sciatica pain.

The Arbitrator finds that Petitioner then had three unrelated incidents which caused her lower back pain to increase, a repeat MRI to be ordered and then fusion surgery recommended. More specifically, she had an incident in June 2023 when she apparently fell causing increased low back, right hip, and right knee pain; a second incident at home where she fell forward in July 2023 when her son made a loud noise like a scream, which startled her and caused her to fall forward on a table and made her back pain worse; and finally, and perhaps most relevant to this analysis, Petitioner attempted to break up a fight between her brothers in October 2023 and in the process was forcibly grabbed and flung to the side and onto a couch.

The Arbitrator finds that the L5-S1 lumbar fusion surgery would likely not have been necessary *but for* the independent intervening events when she was forcibly and violently thrown aside while breaking up a fight. Therefore, the need for the L5-S1 lumbar fusion surgery is not causally related to the initial work accident on November 11, 2022.

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

The parties have stipulated to hold the issue of Petitioner's earnings in abeyance until such time as the issue of permanency is adjudicated. (AX 1)

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

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

The Arbitrator finds that the treatment provided to Petitioner through the date of hearing on January 9, 2025 was reasonable and necessary. the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act:

Midwest Orthopaedics at Rush, \$17,881.14
Gold Coast Surgicenter, \$10,904.49.

Respondent is entitled to credit for medical benefits in the amount of \$56,866.58. (AX 1; RX 6)

Issue O, whether Petitioner is entitled to prospective medical, the Arbitrator finds as follows:

The Arbitrator finds that Petitioner failed to prove by a preponderance of the credible evidence that she is entitled to prospective medical treatment.

First, the Arbitrator again notes that Petitioner failed to sustain her burden of proof by a preponderance of the credible evidence that her current condition of ill-being is causally related. Moreover, the Arbitrator also notes Dr. Lami's opinion that Petitioner, regardless of causation, is likely not a good candidate for lumbar fusion surgery due to her body weight and the fact that she is a smoker.

There is no requirement that the Arbitrator give greater weight to testimony of the treating physician than that of a physician who has examined the employee solely for the purpose of testifying. Arcole Midwest Corp. v. Industrial Com., 81 Ill. 2d 11, 16, 405 N.E.2d 755, 758 (1980). Accordingly, the Arbitrator adopts the opinions of Dr. Lami as to the reasonableness and necessity of the proposed lumbar fusion, and the surgery is not awarded.

CONCLUSION

In light of the above facts and considerations, the Arbitrator finds that Petitioner's current condition of ill-being is not causally related to her work accident on November 11, 2022. The parties have stipulated to hold the issue of Petitioner's earnings in abeyance until such time as the issue of permanency is adjudicated. The Arbitrator finds that the treatment provided to Petitioner through the date of hearing on January 9, 2025 was reasonable and necessary. the Arbitrator orders Respondent to pay Petitioner directly for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Midwest Orthopaedics at Rush, \$17,881.14 and Gold Coast Surgicenter (\$10,904.49). Respondent is entitled to Section 8 (j) credit for medical benefits that have been paid as reflected in Respondent's medical payment itemization. Finally, the Arbitrator finds that Petitioner is not entitled to prospective medical treatment as it relates to the lumbar fusion.

It is so ordered:

A handwritten signature in black ink, appearing to be 'Efi James', with a long horizontal flourish extending to the right.

Arbitrator Efi James

APRIL 10 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005812
Case Name	Roger Hetge v. Alton Community Unit School District 11
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0042
Number of Pages of Decision	21
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	David Galanti
Respondent Attorney	Matthew Terry

DATE FILED: 2/11/2026

/s/ Frank Soto, Commissioner

Signature

24 WC 5812

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

Roger Hetge,

Petitioner,

vs.

NO: 24 WC 5812

Alton Community Unit School District 11,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 29, 2025 is hereby affirmed and adopted.

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

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

24 WC 5812

Page 2

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$26,700.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

FEBRUARY 11 2026

O: 1/28/26

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	24WC005812
Case Name	Roger Hetge v. Alton Community Unit School District 11
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	David Galanti
Respondent Attorney	Matthew Terry

DATE FILED: 5/29/2025

/s/Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF MAY 28 2025 4.16%

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)

Roger Hetge
 Employee/Petitioner

Case # **24** WC **005812**

v.

Consolidated cases: _____

Alton Community Unit School District 11
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **4/21/2025**. 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, **11/30/2023**, 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 **\$96,820.74**; the average weekly wage was **\$2,151.57**.

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1,434.38/ week for 18 and 4/7 weeks, commencing December 1, 2023, through April 8, 2024, as provided in Section 8 (b) of the Act.

Petitioner is entitled to the prospective medical treatment, specifically total knee replacement surgery and follow-up care as recommended by Dr. Solman.

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

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice 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

MAY 29 2025

PROCEDURAL HISTORY

This matter proceeded to trial on April 21, 2025, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of employment; 2) the causal connection between the accident and the Petitioner's left knee condition; 3) entitlement to prospective medical care to the Petitioner's left knee; and 4) entitlement to TTD benefits.

The parties stipulated that the bill from urgent care – potentially the sole remaining unpaid medical bill in Petitioner's Exhibit 9 – will be paid pursuant to the fee schedule.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 56 years old and employed by the Respondent as an assistant principal for 18 years. (T. 11) On November 30, 2023, he was breaking up a fight, during which he twisted or turned and ended up on the ground on top of a student he was trying to cover while another student was hitting and kicking the student on the ground. (T. 12-13) The Petitioner testified that when he hit the ground, he came down on his left knee. (T. 16) The Petitioner submitted videos of the fight from two different angles. (PX1) The Petitioner said he had an abrasion on his knee and later started feeling sharp pains in his knee. (T. 20-21)

The Petitioner testified that prior to the incident, he had no problems with nor treatment for his left knee. (T. 22) Prior records from the Petitioner's primary care providers at BJC Medical Group Primary Care show that he was being treated for hypertension, anxiety, Type 2 diabetes with hyperlipidemia, low back pain, sleep apnea and morbid obesity. (PX4, RX2) He was taking medication for hypertension and diabetes. (Id.)

The morning after the incident, the Petitioner sought treatment from Alton Urgent Care. (T. 22) He was given pain medication and orders for X-rays. (PX2) The X-rays were performed that day at BrightWay Imaging and were negative for fractures. (PX3)

On December 4, 2023, the Petitioner followed up with his primary care physician, Physician Assistant Michele Brannan at BJC Medical Group at Alton Memorial Hospital. (T. 22-23, PX4, RX2) He complained of knee pain and said he was breaking up a fight and fell on his left knee. (PX4, RX2) PA Brannan ordered an MRI and referred the Petitioner to orthopedics. (Id.)

The MRI was performed on December 18, 2023, at Alton Memorial Hospital Twin Rivers MRI Center. (PX3, PX5) It showed: an incomplete undersurface tear of the left lateral meniscal body posterior horn junction; mild-to-moderate patellofemoral predominant tricompartmental left knee chondrosis; and small left knee effusion. (Id.)

The Petitioner presented to Dr. Aaron Omotola, an orthopedic surgeon at BJC Medical Group Orthopedics and Sports Medicine on January 5, 2024, and complained of left knee pain that was moderate during the day and severe at night. (PX5) After an examination and review of the MRI, Dr. Omotola diagnosed a tear of the lateral meniscus of the left knee and recommended arthroscopic knee surgery with meniscectomy. (Id.) The surgery was performed on January 23, 2024. (PX6) The Petitioner began physical therapy on January 29, 2024, at Alton Physical Therapy. (PX7)

The Petitioner testified that he had short-term improvement with his left knee following the surgery. (T. 26) He said his pain has continued but the surgery lessened the sharpness. (T. 26-27) He said that following the surgery, there was a lot of instability in his knee, and he would have to stand up and pop his knee 20-30 times a day for it to be stable. (T. 27-28, 30)

At his physical therapy visit on February 19, 2024, the Petitioner reported a really tender/painful spot along the distal lateral hamstring and that he had been experiencing painful popping with movement that had worsened since surgery. (PX7)

Also on February 19, 2024, the Petitioner also followed up with Physician Assistant McKenzie Youngblood at Dr. Omotola's office. (PX5) PA Youngblood stated that the popping and pain were due to a combination of the lateral meniscectomy, underlying advanced arthritis that flared up secondary to the surgery, tight hamstrings and the patella chondroplasty. (Id.) She stated that physical therapy takes several weeks to take effect and the Petitioner needed to keep taking his pain medications, stretching, icing, taking anti-inflammatories and wearing his knee brace. (Id.) She said that if his pain did not improve with physical therapy and time, it is due to flare up of underlying arthritis, which can happen sometimes after a surgery. (Id.) She said she could then offer injections, as he was not eligible for a total knee replacement due to his weight. (Id.)

The Petitioner underwent imaging on February 23, 2024, for pain behind his knee. (PX3) No left lower extremity deep venous thrombosis was found. (Id.)

The Petitioner participated in physical therapy for a total of 16 visits. (PX7) At his last visit on March 6, 2024, it was noted that he was experiencing painful popping and had a painful palpable knot the size of a pea along the posterior lateral knee. (Id.)

An MRI was performed on April 3, 2024, at Alton Memorial Hospital Twin Rivers MRI Center. (PX3, PX5) It showed: 1) incomplete oblique undersurface linear high signal of the left lateral meniscus posterior horn body junction, similar to prior exam; 2) mild to moderate patellofemoral predominant tricompartmental left knee chondrosis; and 3) small left knee effusion. (Id.) There was a notation that the Petitioner stated that a steroid pack was "really helping" with

his pain. (Id.) The Petitioner had no pain during treatment and was able to walk eight minutes. (Id.) He demonstrated difficulty with lateral and forward dips. (Id.)

At a post-operative visit on April 8, 2024, the Petitioner reported that his symptoms had not been improving – that he had pain and instability limiting his ability to perform day-to-day activities, such as walking more than five minutes at a time or climbing or descending stairs. (PX5, RX9) PA McKenzie Youngblood reported that the recent MRI was negative for surgical pathology or acute findings, did show osteoarthritic changes and was otherwise unremarkable. (Id.) PA Youngblood recommended a cortisone injection to help bring down inflammation and help with the pain. (Id.) She also discussed with the Petitioner that he may benefit from referral to pain management for consideration of radiofrequency nerve ablation and would ultimately benefit from a total knee replacement, but he was not considered a surgical candidate at that time due to his elevated body mass index (BMI). (Id.) She stated that to be a surgical candidate for a total knee replacement, BMI would need to be 40 or below. (Id.) She also said the Petitioner would benefit from continued physical therapy to work on strength and improving stability of the knee. (Id.)

PA Youngblood said the Petitioner could return to work with restrictions of no stairs, no breaking up any type of altercation, using the elevator, no walking more than five minutes at a time and being able to take frequent breaks as needed. (Id.) She said the Petitioner should continue with further conservative management including NSAIDs, Tylenol, ice, heat and avoidance of aggravating activity. (Id.)

The Petitioner testified that he missed work from December 1, 2023, through April 8, 2024, returning to work in a light duty capacity on April 9, 2024. (T. 23-24) He said he was given the option to take workers' compensation benefits or sick leave and opted for sick leave because he

was concerned about the amount of pay he would receive from workers' compensation so he could pay his bills. (T. 24-26) He took the sick leave option on December 14, 2023. (RX4)

The Petitioner testified that he declined either pain management or an injection because he was told relief would only be temporary. (T. 28-29) He said he did not think that Dr. Omotola declining to perform a total knee replacement was due to his weight. (T. 36) He did believe Dr. Omotola's office told him his continued symptoms were related to underlying osteoarthritis and weakness in his knee. (T. 36) He acknowledged having high blood pressure and high A1C, as well having high cholesterol in the past. (T. 39-40)

At another post-operative visit on April 14, 2024, the Petitioner informed PA Youngblood that he did not want an injection or pain management referral at that time and wanted to be released to be able to return to his normal activities because he was tired of sitting at home. (RX9) He said that working with restrictions had gone well, and the Respondent was accommodating him. (Id.) PA Youngblood released him without restriction but left open the options of an injection and pain management. (Id.)

The Petitioner next sought treatment on August 9, 2024, from Dr. Corey Solman, an orthopedic surgeon at CGS Ortho. (PX8) He reported that his knee had gotten continually and progressively painful since the surgery. (Id.) He said the knee would get stuck when he is stationary and will pop and cause pain. (Id.) He said he limped at times and could not kneel or squat. (Id.) He said it was hard to get up from a seated position, that he had some pain when driving for prolonged periods of time, had to hang on when he went up and down stairs, had some night pain when his knee was in a bad position, had increased pain with walking, did not have any swelling in the knee and did feel grinding in the knee with range of motion. (Id.)

Dr. Solman performed an examination, took X-rays and reviewed the two MRIs. (Id.) He stated that the April 3, 2024, MRI showed advanced chondrosis in all three compartments that appeared to have worsened slightly since the December 18, 2023, MRI. (Id.) He believed the injury of November 30, 2023, was the substantial contributing factor to the meniscus tear and in making the Petitioner's asymptomatic chondrosis condition in the left knee symptomatic. (Id.) He also believed the injury and subsequent surgery were the substantial contributing factors in irreversibly accelerating the osteoarthritis in the left knee, leading to the need for treatment. (Id.)

Dr. Solman stated that the Petitioner could consider injections in an attempt to decrease inflammation and improve his pain, but that the Petitioner would rather move forward with a total knee replacement. (Id.) Dr. Solman believed surgery was a reasonable option to consider, given the Petitioner's symptomatology of having some giving-way sensations and popping and grinding of the knee. (Id.) The Petitioner was very confident that he would do well with total knee replacement, as he did extremely with a right hip replacement four years prior. (Id.) They did discuss alternatives – including injections, physical therapy and medications – but the Petitioner wished to proceed with surgery so he could get his knee feeling better and be able to do all activities as tolerated. (Id.)

Regarding work restrictions, Dr. Solman stated that because the Petitioner was retired, he did not believe he required any. (Id.) On November 21, 2023, the Petitioner submitted his retirement resignation effective at the end of the 2023-2024 school year. (RX3)

The Petitioner underwent a Section 12 examination on September 25, 2024, performed by Dr. W. Chris Kostman, an orthopedic surgeon at Performance Orthopedics. (RX1, Deposition Exhibit 2) The Petitioner described the accident consistent with his testimony and reports to the other medical providers. (Id.) Dr. Kostman stated that the Petitioner denied "any other associated

injury to his left knee other than a direct anterior impact.” (Id.) He denied any prior knee problems. (Id.) He discussed the surgery and said that after physical therapy, his left knee symptoms were 30 percent better. (Id.) At the time of the examination, the Petitioner reported his pain at night and going up and down stairs – both prior to and after the surgery – was similar to his current symptoms. (Id.) He also described some popping, snapping and grinding sensation and giving-way sensation, along with numbness and weakness of his left leg. (Id.)

Dr. Kostman took X-rays and reviewed arthroscopic images from the surgery, the Application for Adjustment of Claim, incident reports from the Respondent, urgent care records, X-rays from BrightWay Imaging, primary care records from BJC Medical Group, MRI films from December 18, 2023, records from Dr. Omotola’s office, Dr. Omotola’s operative note, physical therapy records, MRI films from April 3, 2024, and Dr. Solman’s records. (Id.)

On the December 18, 2023, MRI, Dr. Kostman saw significant patellofemoral degenerative change, chondromalacia, possible meniscus tear, osteophyte formation involving the medial femorotibial joint line, tricompartmental degenerative change, no evidence of traumatic injury and no bony edema. (Id.)

On the arthroscopic images from the surgery, Dr. Kostman noted: chondromalacia degenerative change involving the medial compartment: apparent intact anterior cruciate ligament (ACL) with some erythema; lateral compartment appearing to demonstrate some meniscal fraying along its free edge with a shaver adjacent to that position; chondromalacia involving the lateral femoral condyle, lateral tibial plateau, medial femoral condyle, medial tibial plateau, patella and trochlear groove; and no evidence of trauma to the patella femoral compartment, medial or lateral joint line. (Id.) He said the chondromalacia in all three compartments appeared similar, being grade 2/grade 3. (Id.)

On the April 3, 2024, MRI, Dr. Kostman saw advanced degenerative change involving the patellofemoral joint, post-operative changes in the lateral meniscus, and medial and lateral degenerative change within the femorotibial joint. (Id.) He noted no significant change over the prior MRI. (Id.)

Dr. Kostman diagnosed a lateral meniscus tear and left knee chondromalacia. (Id.) He said the Petitioner did not have a twisting injury to his left knee and said evaluators did not note any mechanical symptoms to the left knee. (Id.) He did not believe that the meniscus tear was caused by the work accident because a direct impact to the knee is not a mechanism of developing a meniscus tear, adding that traumatic meniscus tears typically demonstrate mechanical symptoms and not anterior knee pain and night pain. (Id.) He also did not believe the findings of chondromalacia were caused or permanently aggravated by the accident, stating that the degree of chondromalacia was consistent along all three compartments, which is not consistent with a traumatic cause. (Id.) He said the X-ray findings of medial femorotibial joint space narrowing and patellofemoral degenerative change are not consistent with a traumatic cause. (Id.) He said the MRI scan did not demonstrate evidence of an anterior impact – no bony contusion – as would be seen with significant trauma. (Id.) He said that neither the operative note nor images demonstrated traumatic chondral damage.

Regarding future treatment, Dr. Kostman did not believe the Petitioner required medical treatment for his left knee. (Id.) He recommended management of the left knee chondromalacia with nonsteroidal anti-inflammatory medications and weight loss. (Id.) He did not believe the Petitioner was a specific candidate for a total knee replacement with grade 2/3 findings of chondromalacia involving the left knee, obesity and taking ibuprofen. (Id.) He said that although the Petitioner could elect to have a knee replacement, he did not believe the need for that treatment

is reasonable, related to or necessary as to the work accident. (Id.) He said the Petitioner's left knee was symmetric with his right knee and consistent with his history of osteoarthritis involving his knees, right hip, BMI and medical history. (Id.) He said the Petitioner was at maximum medical improvement for the work accident as of the date of the Section 12 examination. (Id.)

The Petitioner retired on June 30, 2024. (T. 37)

Dr. Solman testified consistently with his records at a deposition on February 25, 2025. (PX10) He explained that one reason for the increase in the chondrosis in the Petitioner's knee from the December 18, 2023, MRI to the April 23, 2024, MRI is trauma, which can cause irreversible acceleration of arthritis changes and advancing of chondrosis or cartilage thinning. (Id.) He said the other reason could have been the surgery performed by Dr. Omatola. (Id.) He explained that when meniscal tissue is removed from a compartment, that articular cartilage sees more stress and force on it and that, in and of itself, can also cause acceleration of the chondrosis and can lead to the symptomology the Petitioner was experiencing. (Id.) He said the meniscus is the shock absorber of the knee, providing shock absorption to the articular cartilage over the joint surface. (Id.) He said that a lateral meniscectomy, such as the Petitioner had, reduces the size of the shock absorber and increases the pressure on the weight-bearing areas. (Id.)

As to the mechanism of the Petitioner's injury, Dr. Solman thought the Petitioner was forcing or placing a lot of stress on the knee trying to break up the fight and fell to the ground. (Id.) He said the accident potentially resulted in two different mechanisms – a strain and/or possible twisting injury and a fall directly impacting the knee. (Id.) Dr. Solman acknowledged that he had not reviewed any history of an actual twist of the knee. (Id.) He did not think a direct blow injury is a mechanism that would necessarily create a meniscus tear, adding that if the Petitioner's foot twisted and/or he strained the knee trying to break of the fight prior to falling, that

can place a strain on the meniscus. (Id.) He said there does not have to be a twisting injury to cause a lateral meniscus tear, rather an “axial load” type of injury can occur where force is being imparted through a joint. (Id.) He believed that breaking up a fight can cause that mechanism. (Id.) As to the damage to the Petitioner’s cartilage, Dr. Solman said the fall itself, by striking the knee, can cause damage to the articular cartilage both on the undersurface of the kneecap and on the surfaces of the thigh bone where the kneecap is articulating. (Id.)

Regarding the Petitioner’s choice to proceed with a total knee replacement rather than further conservative treatment, Dr. Solman thought that if a patient has enough of a sensation significant enough to affect all their activities, it is reasonable to proceed with a knee replacement. (Id.) He stated that he would not say that a patient with a BMI over 40 is not a candidate for a total knee replacement, adding that some institutions will set cutoffs of 45, 39 if the patient is diabetic or 37 if the patient has hypertension and diabetes to mitigate risk. (Id.) Dr. Solman said he has performed a total knee replacement on someone with the Petitioner’s BMI. (Id.)

Dr. Kostman testified consistently with his report at a deposition on March 12, 2025. (RX1) He explained that chondromalacia is the same as arthritis. (Id.) He reiterated the rationale for his opinion that the meniscus tear was not causally related to the accident because the Petitioner did not describe a twist injury and the doctors did not note mechanical symptoms in the left knee, adding that degenerative peripheral meniscus tears are common with grade 2/3 chondromalacia and are not traumatic. (Id.) As to the chondromalacia, Dr. Kostman again stated that the degree of chondromalacia was consistent along all three compartments and there was no evidence of traumatic changes on the imaging or operative records. (Id.) Dr. Kostman also believed that the January 23, 2024, surgery did not cause or permanently aggravate or accelerate the Petitioner’s arthritic condition. (Id.)

On cross-examination, Dr. Kostman admitted that he has performed total knee replacements on patients with the Petitioner's BMI and that weight alone does not completely contraindicate such a procedure. (Id.) He said it is possible, but not typical, for someone with grade 2/3 chondromalacia to be asymptomatic and become symptomatic following "substantial trauma." (Id.) He said it is possible for someone who has a shave or debridement of loose cartilage to increase arthritis in the knee, adding that it is not typically a significant advancement. (Id.)

The Petitioner testified that he wants to have the surgery to get his life back, relieve the pain and be able to sleep. (T. 29) At the time of arbitration, the Petitioner rated his pain at 6/10 but said it was 9/10 the day before. (T. 30-31)

CONCLUSIONS OF LAW

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

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

There is no dispute that the Petitioner was breaking up a fight and fell. The dispute as to accident is the mechanism of injury – specifically, whether the way in which the Petitioner fell caused the injury to the Petitioner's left knee. The Arbitrator finds this is a causation issue and not an accident issue. The issue of the mechanism of injury will be addressed below in the causation analysis.

Therefore, the Arbitrator finds that an accident arose out of and in the course of the Petitioner's employment by the Respondent.

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n*, 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.*, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

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

The Petitioner had degeneration in his left knee that predated the accident. The question is whether this was the only cause of his condition or whether the accident contributed to or aggravated the condition.

The Arbitrator first considers the meniscus tear in the Petitioner's left knee. In forming his opinion that the tear was not causally related to the accident, Dr. Kostman, relied on the Petitioner not describing a twist injury and the doctors not noting any mechanical symptoms in the left knee. Dr. Solman believed that two mechanisms could have resulted in the Petitioner's meniscal tear – twisting and an “axial load” type of injury.

Neither doctor reviewed the videos of the accident. The Arbitrator has reviewed them. One only shows the fall where the Petitioner's knee struck the ground. The other video shows the Petitioner struggling to restrain the student but does not show the lower part of his body. The intensity of the struggle shown on the videos lead to the conclusion that it was more likely than not that there was twisting and force involved that would have at least caused an aggravation to an existing meniscal tear, if not causing the tear itself.

Dr. Kostman's observation of no mechanical symptoms being described does not negate the fact that the Petitioner's meniscus was, in fact, torn.

Regarding the damage to the cartilage in the Petitioner's knee, Dr. Kostman's causation opinion relied on the degree of chondromalacia being consistent along all three compartments and there being no evidence of traumatic changes on the imaging or operative records. Dr. Solman said the fall itself, by striking the knee, can cause damage to the articular cartilage. He also said the meniscus surgery itself could have accelerated the damage to the cartilage. Both of these explanations are reasonable.

The circumstantial evidence supports a finding of causation. Although the Petitioner had degeneration in his knee, he was having no problems prior to the accident and was able to fully perform his duties. After the accident, the Petitioner's knee became symptomatic, and he experienced decreased ability to perform his full duties. Also, the Petitioner's symptoms increased

and the nature of his symptoms – instability and popping – changed after the surgery, which further supports a finding, per Dr. Solman’s explanation, that the surgery accelerated the degenerative condition of his knee. Considering the circumstantial evidence, the Arbitrator finds that it is more likely than not that Dr. Solman’s opinions more accurately reflect that the accident, at a minimum, was a contributing factor to the Petitioner’s knee condition.

Therefore, the Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that his current left knee condition is causally related to the accident of November 30, 2023.

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).

Aside from his opinion that further treatment would not be causally related to the accident, Dr. Kostman did not believe a total knee replacement should be performed because the Petitioner’s comorbidities of obesity and diabetes posed an undue risk. However, he acknowledged that he has performed such a procedure on obese patients.

Dr. Solman believed it is reasonable to proceed with a total knee replacement, considering the severity of the Petitioner’s current symptoms. The Arbitrator gives greater weight to Dr. Solman’s opinions regarding future treatment. It can be assumed that, as the treating physician, Dr. Solman has weighed the risks and benefits of surgery and will abide by his oath to do no harm to his patient.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care for his left knee, specifically a total knee replacement as recommended by Dr. Solman. The Respondent shall authorize and pay for such.

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

"The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force." *Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Comm'n*, 236 Ill.2d 132, 146, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010). "Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Id.*

The Respondent disputes the Petitioner's entitlement to TTD benefits based on a lack of causation. Based on the findings above regarding causation, the Arbitrator finds the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 18 and 4/7 weeks, from December 1, 2023, through April 8, 2024.

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	24WC008080
Case Name	Donald Lewis v. State of Illinois - Secretary of State
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0043
Number of Pages of Decision	25
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Robert Smoler
Respondent Attorney	Sidney Gui

DATE FILED: 2/11/2026

/s/ Marc Parker, 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 up	☒ None of the above

Donald Lewis,

VS.

No. 24 WC 8080

State of Illinois – Secretary of State,

Respondent.

Timely Petition for Review under §19(b) and §8(a) having been filed by 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, and whether the medical expenses should be paid to the providers, 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).

On March 18, 2024, Petitioner, a 59-year-old janitor, was vigorously scrubbing a toilet when the brush he was using bent or broke, and he developed a sharp shooting pain in his neck, right shoulder, and right arm. He was initially treated at Concentra, where he reported the sharp pain was in his right trapezius, and traveled to his right upper back and right arm. Petitioner's neck was x-rayed, he was given medication and activity restrictions, and he was referred to

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physical therapy. At his March 20, 2024 follow-up appointment, Petitioner complained of worsening symptoms and severe pain in his right neck and right trapezius. Petitioner remained off work because Respondent could not accommodate Petitioner's light duty restrictions.

On March 21, 2024, Petitioner sought treatment with chiropractic physician, Dr. Adrian Zaragoza, for the persistent pain in his neck and right shoulder. Dr. Zaragoza diagnosed muscle spasms and sprains/strains of Petitioner's cervical spine and right shoulder. He took Petitioner off work, and prescribed a course of physical therapy. Due to Petitioner's right shoulder pain, Dr. Zaragoza ordered an MRI, which Petitioner underwent on April 25, 2024. The radiologist's impression was that it showed mild right shoulder subscapularis and infraspinatus tendonitis, along with minimal supraspinatus and biceps tendonitis. Although the radiologist did not observe a tendon tear, he noted a possible labral tear, and recommended clinical correlation.

On May 10, 2024, Petitioner had a telephonic consultation with Dr. Ankur Chhadia, an orthopedic surgeon whose practice focuses on treatment and surgery of shoulders and knees. Dr. Chhadia recommended Petitioner remain off work, continue his medications, and continue physical therapy. Between May 13, 2024 and July 8, 2024, Petitioner also received three injections to his right shoulder, which provided only transient pain relief. During that time, Petitioner continued receiving chiropractic therapy from Dr. Zaragoza, and remained off work.

Petitioner underwent Section 12 examinations of his right shoulder with Respondent's orthopedic surgeon, Dr. Brian Forsythe, on June 20, 2024 and September 19, 2024. Petitioner told Dr. Forsythe that he had never received treatment to his right shoulder prior to March 18, 2024, and that until that date, his right shoulder function was 100%. However, records show that Petitioner did undergo a prior right shoulder MRI – on March 2, 2017 – which Dr. Forsythe reviewed and reported showed partial articular sided rotator cuff tearing, but an intact labrum. Dr. Forsythe also reviewed Petitioner's right shoulder MRI dated April 25, 2024, which he believed showed mild tendinosis and mild fraying of the posterior labrum, though with no clear detachment. At Dr. Forsythe examination of Petitioner, he believed Petitioner demonstrated mild to moderate symptom magnification. Dr. Forsythe opined that Petitioner had preexisting right shoulder rotator cuff tendinosis, and that his sole injury from his March 18, 2024 work accident was a right shoulder strain. However, at Dr. Forsythe's June 20, 2024 exam, he acknowledged that Petitioner's right shoulder was not at MMI; he still required work restrictions; and he would benefit from four additional weeks of physical therapy.

At Dr. Forsythe's second examination of Petitioner on September 19, 2024, he reviewed additional medical records of Petitioner's treatment. He reported that Petitioner had undergone only one right shoulder injection, although records show Petitioner had undergone three. Following his examination of Petitioner on that date, Dr. Forsythe opined that the chiropractic sessions Petitioner attended since his June 20, 2024 examination had been excessive; Petitioner's right shoulder was at MMI; Petitioner required no further treatment; and he was capable of working full duty without restrictions.

Dr. Chhadia authored a report dated October 24, 2024 in which he disagreed with Dr. Forsythe's opinions. Dr. Chhadia opined Petitioner had a structural and mechanical problem in his right shoulder that was consistent with tendinitis, partial tearing, biceps tendinitis, subacromial bursitis, impingement, and synovitis. Dr. Chhadia opined that Petitioner's reported mechanism of injury – vigorously scrubbing a toilet after which he developed right shoulder pain and weakness – correlated with his physical exam findings and his diagnostic imaging. Dr. Chhadia did not observe symptom magnification or exaggeration on Petitioner's part, and he opined that because Petitioner's symptoms had not resolved following 6 months of conservative treatment, shoulder surgery would be appropriate and would be causally related to his March 18, 2024 accident.

The Arbitrator found most persuasive Dr. Forsythe's causation opinion: that Petitioner's right shoulder injury was only a strain which reached MMI by September 18, 2024. The Arbitrator awarded Petitioner medical expenses only from the date of accident through September 18, 2024, and ordered Respondent to pay those medical expenses directly to the providers. The Arbitrator also awarded Respondent a \$21,922.56 credit for the TTD it had paid, pursuant to the parties' stipulation, but did not award Petitioner TTD for the period March 22, 2024 through October 8, 2024 – to which the parties also stipulated Petitioner was entitled. Finally, the Arbitrator denied prospective medical care and Petitioner's request for penalties and attorney's fees. Although the Arbitrator found Petitioner's testimony credible, the Arbitrator did not find his testimony very persuasive, due to inconsistencies.

CONCLUSIONS OF LAW:

Causal Connection:

The Commission views the evidence differently than the Arbitrator, and finds Petitioner's current right shoulder condition causally related to his March 18, 2024 work accident. We do agree with the Arbitrator that Petitioner's testimony was credible; however, we do not find significant the inconsistencies which the Arbitrator believed rendered his testimony unpersuasive. While Petitioner's reported mechanism of injury documented by his doctors varied somewhat, he consistently reported that he had been vigorously scrubbing a toilet, with a brush in his right hand, when he felt immediate pain to his right shoulder and neck. Whether the brush he was using "bent" or "broke" is insignificant, as was the single report that Petitioner experienced pain while using a toilet plunger. At arbitration, Petitioner refuted the accuracy of that latter report, testifying that he had been using a brush when he first felt pain.

At arbitration, Petitioner acknowledged that he received prior treatment to his right shoulder following a 2016 injury. He testified that after he was treated for that injury, he was released to full duty work, continued working, and received no further treatment to his right shoulder until his March 18, 2024 accident. Although Petitioner did not inform doctors of his 2016 shoulder injury or his 2017 right shoulder MRI, we note that Petitioner's 2017 MRI was largely unremarkable, and according to the interpreting radiologist, showed only supraspinatus thickening

from chronic tendinopathy, with no tears to the rotator cuff, labrum, or biceps. The Commission finds the evidence shows that, while Petitioner had preexisting tendinitis prior to his March 18, 2024 work accident, it was asymptomatic and did not prevent him from performing any of his job duties prior to that date.

The Commission disagrees with the Arbitrator's finding that records documenting treatment from Petitioner's June 7, 2024 auto accident were necessary to prove his right shoulder was not injured in that accident. Petitioner testified that at the time of that auto accident, he was on his way to his doctor for a colonoscopy. He testified that his left arm was hurt in that accident, but he specifically denied injuring his right shoulder and right arm. Petitioner testified he told his doctor about his accident, and when he did, she informed him that his left arm was probably only bruised, and that he should take ibuprofen for it. Petitioner denied receiving any other treatment as a result of his June 7, 2024 auto accident. Given Petitioner's unrebutted testimony, we find it unreasonable to conclude that any medical records documenting treatment for injuries from that auto accident even existed. Contrary to the Arbitrator's finding, we do not agree that Petitioner's failure to offer such supposed records into evidence precludes a finding that his current right shoulder condition is causally related to his March 18, 2024 work accident.

We also disagree with the Arbitrator's conclusion that Petitioner's right shoulder pain significantly increased following his June 7, 2024 auto accident. On May 20, 2024 (2 weeks before that accident), Petitioner reported his right shoulder pain was up to 6/10. On June 10, 2024 (3 days after the auto accident), his records documented his pain to be slightly higher, at 8/10, but also noted that he, "is not reporting any new complaints." Petitioner did receive a shoulder injection on that date, and by June 18, 2024 (11 days after the auto accident), he reported his shoulder pain had decreased to between 1/10 and 5/10. Petitioner's treatment included 3 shoulder injections, each of which caused his pain to temporarily decrease. As the medication from those injections wore off, Petitioner's reported shoulder pain levels again increased. We do not attribute the fluctuations in Petitioner's reported pain levels, after June 7, 2024, to his auto accident of that date. For these reasons, we strike from page 10 of the Arbitration Decision the two paragraphs which discuss Petitioner's auto accident, and which imply that it may have caused an injury to his right shoulder.

Although treating orthopedic surgeon, Dr. Chhadia, did not initially review Petitioner's 2017 MRI or his chiropractic treatment records, we nonetheless find his opinions more persuasive than those of Respondent's Section 12 examiner, Dr. Forsythe. Dr. Chhadia opined that Petitioner's mechanism of injury: vigorously scrubbing a toilet – caused pain and weakness in his right shoulder. He opined that Petitioner's 2024 MRI, which he personally reviewed, clearly showed a structural and mechanical problem in the shoulder consistent with tendinitis, partial tearing, biceps tendinitis, subacromial bursitis and impingement, and synovitis. Dr. Chhadia further based his causation opinion on the fact that Petitioner's right shoulder symptoms began on March 18, 2024, and that the shoulder injections he received provided only transient relief, which also correlated with Petitioner's symptoms. Dr. Chhadia testified that Petitioner's 2017 right shoulder MRI did not change his causation opinion. Dr. Chhadia opined that surgery for

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Petitioner's right shoulder was clearly indicated, and that it would be causally related to his work accident.

We find Dr. Forsythe's opinions less credible than Dr. Chhadia's. Although Dr. Forsythe reviewed Petitioner's chiropractic records and his 2017 MRI, he did not have an accurate understanding of the treatment Petitioner received following his March 2024 accident. On September 19, 2024, Dr. Forsythe reported that Petitioner had only received one shoulder injection, when, in fact, Petitioner had received three. Dr. Forsythe failed to explain why, if Petitioner sustained only a shoulder strain which was resolved by September 19, 2024, he still complained of 8/10 pain on that date. Nor did Dr. Forsythe explain why on June 20, 2024 he found Petitioner in need of 4 weeks of therapy, but then in September, he opined that the chiropractic therapy Petitioner received since his June exam had been excessive. Although Dr. Forsythe believed Petitioner showed signs of symptom magnification, no other physicians reported that.

The Arbitrator found chiropractor Zaragoza's causation opinion less persuasive than Dr. Forsythe's opinion, because he based it upon a reasonable degree of chiropractic *and medical* certainty, when Dr. Zaragoza is not a medical doctor. The Arbitrator also discounted Dr. Zaragoza's opinions because he mistakenly wrote that Petitioner's injury was directly related to a *motor vehicle accident* of 03/18/24.

While we base our causation finding largely upon Dr. Chhadia's persuasive opinions, we do not outright reject Dr. Zaragoza's opinions because he based them upon "medical certainty" in addition to "chiropractic certainty." Nor do we find Dr. Zaragoza's inadvertent reference to Petitioner's work accident as being a "motor vehicle accident," reason to discount his opinions. We find that reference to clearly be a clerical error, as Dr. Zaragoza's March 21, 2024 report accurately documented Petitioner's history of developing right shoulder pain while vigorously scrubbing a toilet. Although we give lesser weight to Dr. Zaragoza's causation opinion, we find that it supports Dr. Chhadia's causation opinion.

*Medical Expenses and
Prospective Medical Care:*

Having found Petitioner's current right shoulder condition causally related to his March 18, 2024 accident, we also find that his medical treatment related to that condition did not end on September 18, 2024, but rather, continued through the May 7, 2025 date of arbitration. Both Dr. Chhadia and Dr. Zaragoza reported that their treatment of Petitioner had been reasonable and causally related to his March 18, 2024 injury. Even Dr. Forsythe opined, on June 20, 2024, that Petitioner's treatment through that date had been reasonable and necessary, and that Petitioner was still in need of additional treatment for his work injury.

We find that the unpaid medical expenses should be paid to Petitioner, not his providers. Section 8(a) of the Act states, "If the employer does not dispute payment of first aid, medical, surgical, and hospital services, the employer shall make such payment to the provider on behalf of

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the employee.” Such is not the case here. Because Respondent disputed payment of Petitioner’s medical expenses after September 18, 2024, we find that Respondent shall pay to Petitioner all unpaid reasonable and necessary bills for medical services contained in Petitioner’s exhibits PX1 through PX6, pursuant to the medical fee schedule and §8(a) and §8.2 of the Act.

The Commission also finds, based upon the foregoing, that Dr. Chhadia’s recommendation for arthroscopic right shoulder surgery is reasonable and necessary to cure and relieve the effects of Petitioner’s work injury. We therefore order Respondent to provide and pay for that treatment, as well as any reasonable, necessary and related follow-up care, pursuant to the medical fee schedule and §8(a) and §8.2 of the Act.

Temporary Total Disability:

At arbitration, the parties stipulated that Petitioner was entitled to temporary total disability for the period of March 22, 2024 through October 8, 2024.¹ The parties further stipulated that Respondent was entitled to a credit of \$21,922.56 for TTD it had paid to Petitioner. We affirm the aforesaid TTD credit to Respondent; but in addition, we award Petitioner 28-5/7 weeks of temporary total disability for the period of March 22, 2024 through October 8, 2024, to which the parties stipulated.

Penalties and Attorney’s Fees:

The Request for Hearing form states that Petitioner filed a petition seeking penalties and attorney’s fees award under §19(k), §19(l), and §16. However, no such petition was offered into evidence.

While the Commission finds Dr. Forsythe’s opinions less persuasive than Dr. Chhadia’s, we find that they nonetheless provided a bona fide basis for Respondent to have relied upon in withholding benefits after September 18, 2024. Petitioner acknowledged that, by admitting in his Statement of Exceptions that, “Respondent has a defense to the issuance of penalties by their reliance upon their IME doctor’s opinions.” We agree; and we affirm the denial of penalties and attorney’s fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 6, 2025, is modified as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner has proven his current right shoulder condition is causally related to his work accident of March 18, 2024.

¹ The Request for Hearing form, signed by the parties, inaccurately reported the period between March 22, 2024 and October 8, 2024 to be 30-3/7 weeks. The Commission calculates that period to be only 28-5/7 weeks.

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IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the unpaid reasonable and necessary bills for medical services contained in Petitioner's exhibits PX1 through PX6, pursuant to the medical fee schedule and §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall provide and pay for the arthroscopic right shoulder surgery recommended by Dr. Chhadia, along with all reasonable, necessary, and related follow-up care, pursuant to the medical fee schedule and §8(a) and §8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that, pursuant to the parties' stipulations, Respondent shall pay Petitioner 28-5/7 weeks of temporary total disability benefits for the period March 22, 2024 through October 8, 2024; and, Respondent shall be given a credit of \$21,922.56 for temporary total disability benefits it has paid Petitioner.

IT IS FURTHER ORDERED BY THE COMMISSION that penalties and attorney's fees are denied.

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

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

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

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.

February 11, 2026

MP/mcp
o-01/28/26
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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	24WC008080
Case Name	Donald Lewis v. State of Illinois - Secretary of State
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	Crystal Caison, Arbitrator

Petitioner Attorney	Robert Smoler
Respondent Attorney	Sidney Gui

DATE FILED: 8/6/2025

/s/ Crystal Caison, Arbitrator
Signature

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



AUGUST 6, 2025

/s/ Michele Kowalski

Michele Kowalski, Secretary
Illinois Workers' Compensation
Commission

INTEREST RATE WEEK OF AUGUST 5, 2025 3.98%

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)

Donald Lewis

Employee/Petitioner

v.

Illinois Secretary of State

Employer/Respondent

Case # **24** WC **008080**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Crystal L. Caison**, Arbitrator of the Commission, in the city of **Chicago**, on **May 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. ☒ 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 18, 2024**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$32,624.50**; the average weekly wage was **\$1,147.58**.

On the date of accident, Petitioner was **59** 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 **\$21,922.56** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$21,922.56**.

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

ORDER

The Arbitrator finds that the Petitioner has not met his burden of proving by the preponderance of evidence that his current condition of ill-being of right shoulder is causally related to the work accident of March 18, 2024.

The Arbitrator finds Respondent liable for reasonable and necessary medical services contained in Petitioner's Exhibits PX 1, 2, 3 and 4 for services from March 18, 2024 through September 18, 2024, to be payable directly to the providers as provided in Sections 8(a) and 8.2 of the Act.

The Arbitrator declines to award prospective medical.

The Arbitrator declines to impose penalties.

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

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

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

Crystal L. Caison

Signature of Arbitrator

AUGUST 6, 2025

Donald Lewis)
)
 Petitioner,)
)
 v.)
) Case No. 24WC008080
 Illinois Secretary of State)
)
 Respondent.)

This matter proceeded to hearing on May 7, 2025 before Arbitrator Crystal L. Caison. Issues in dispute include causal connection, medical bills, prospective medical care and penalties. (AX 1).

THE ARBITRATOR MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner testified that on March 18, 2024, he went into the restroom at ILSOS to clean. He recalled that the last stall was very dirty and contained feces stuck onto the bowl of the toilet

like “black glue”. He testified that the stains would not come out and that he vigorously scrubbed the stains and broke the toilet brush while attempting to do so. Petitioner testified to feeling immediate pain in his right arm all the way up into his shoulder. He dropped the brush and went to the office due to his injury. Petitioner noted that he is right-handed.

Petitioner testified that he sustained a prior workers’ compensation injury on November 14, 2016 while changing a buffing pad on the floor buffing machine. He testified that he missed some time from work, but that he did not have surgery or injections related to that incident and that he returned to full duty work. Petitioner further testified that he was involved in a motor vehicle accident on June 7, 2024 and that he injured his left arm in that accident, but did not get ambulance treatment on-site and instead consulted with his primary care physician because he had been on his way to a doctor’s appointment for a colonoscopy at the time of that crash. Petitioner submitted no medical records in evidence as related to his treatment from this auto accident date.

Petitioner testified that Respondent requested that he return to work on October 9, 2024, based on the full duty release opinion of Dr. Forsythe. Petitioner explained that he did not return to work until October 11, 2024 because he is the sole caregiver to his disabled father and his fifteen-year-old son, and he needed to plan for someone to take care of his father before he could return to work for Respondent. Petitioner testified that he helped his father with preparing food and his medications. Petitioner does not receive income for performing those services for his father.

Petitioner testified that he has right shoulder pain every day and that sometimes he is in so much pain doing work that he has to go home. Petitioner explained that the work he does like scraping the floor and baseboard flares up his shoulder complaints. Petitioner testified to using 800mg of ibuprofen or creams for daily pain relief and he tries to avoid sleeping on his right shoulder. Petitioner testified that his range of motion is impacted and that raising his arm hurts under the armpit and up into his shoulder. Petitioner demonstrated this at trial and further indicated that when he reaches backwards, he is in pain and his arm can only reach back as far as approximately his right hip area, with resulting pain.

Petitioner testified that Dr. Ankur Chaddia referred him to Dr. Chunduri for pain relief care. Petitioner testified that he wants to have the right shoulder surgery prescribed by Dr. Chhadia.

Medical

January 5, 2017- Petitioner underwent a neck MRI due to pain complaints, with unremarkable findings. PX4 at 2-3.

March 2, 2017- Petitioner underwent a right shoulder MRI, and the accompanying MRI report indicated impressions of supraspinatus thickening from chronic tendinopathy. *Id.* at 4-5.

March 18, 2024- Petitioner presented at Concentra with neck complaints and claimed that the injury had occurred at work at noon while cleaning the toilet with a brush and that the pain had traveled from his right upper back into his right arm. PX1 at 51, 53. Petitioner denied prior injury to the area. *Id.* Petitioner described the pain as being in his right trapezius muscle. *Id.* at 56. Concentra received a provider injury alert from GBCare on March 18, 2024, indicating that Petitioner had stated that while he was brushing the toilet the brush “kind of bent” and pain shot up his right arm. PX1 at 32. X-rays were performed and Petitioner was given anti-inflammatory medication and told to return to work on March 19, 2024 with restrictions. *Id.* at 58-59.

March 19, 2024-Petitioner reported to Concentra for an initial PT visit. PX1 Per office visit notes, Petitioner told providers that he had been forcefully pulling backwards on a plunger when he felt sharp shooting pain that started in the base of the right side of his neck and shot down all the way into his right fingertips. PX 1 at 23-24, 28. Petitioner described difficulty sleeping and burning pain in his right arm and tingling in his thumb, index finger, and middle finger. *Id.* at 24.

March 20, 2024-Petitioner continued to treat with Concentra on due to worsening symptoms and was released to work effective March 27, 2024 under modified duty. Petitioner told providers that light duty work was not available with his employer and so he had not been working. *Id.* at 10-11, 13.

Petitioner was diagnosed with a neck strain and noted to be 25% of the way towards meeting the physical requirements of performing his job duties. *Id.* at 14.

March 21, 2024- Petitioner reported to Dr. Zaragoz that he sustained an injury at work on March 18, 2024 due to vigorously scrubbing an extremely dirty toilet and feeling acute onset of neck and shoulder pain when he was bent over scrubbing. *Id.* at 10. Petitioner reported neck and right shoulder pain levels at this visit varying from seven to nine out of 10 and concentrated in the right shoulder blade. *Id.*

Dr. Zaragoza diagnosed Petitioner with cervical spine and right shoulder sprain/strain injuries, a nerve root lesion, muscle spasms, spondylosis without myelopathy or radiculopathy in the cervical spine, and cervical radiculopathy. *Id.* at 11-12. Dr. Zaragoza opined that within a “reasonable degree of medical and chiropractic certainty” these diagnoses were related to Petitioner having been in “a motor vehicle accident” on March 18, 2024. *Id.* at 11. There is no other mention of a motor vehicle accident in the records from this date of service.

April 1, 2024- Petitioner had a tele visit with Aleksandr Goldvecht, MD at LaClinica to discuss his pain complaints. PX2 at 174, PX3 at 4. Petitioner was told to continue therapy and medications as prescribed and remain off-work. *Id.* Dr. Goldvecht recommended obtaining an MRI if there is no improvement. *Id.*

April 18, 2024- Petitioner reported to Dr. Zaragoza that he was feeling a lot better and his pain was between four to five out of ten and up to seven out of ten levels in intensity for his neck and right shoulder. PX2 at 26. An MRI of the right shoulder was ordered to rule out a rotator cuff tear and Petitioner was taken off work, as his job did not offer light duty. *Id.* at 27. Petitioner was told to continue therapy with Dr. Zaragoza’s facility two to three times per week for the next four weeks and was given a TENS until for pain relief. *Id.*

April 25, 2024-Petitioner underwent a right shoulder MRI indicated findings of mild subscapularis and infraspinatus tendinosis as well as minimal supraspinatus and biceps long head intra-articular portion tendonitis, with no findings to suggest a tear in that region, but a possible posterior inferior labral tear. PX2 at 141 An MRI arthrogram was suggested for further evaluation, as well as correlating those findings with clinical instability. *Id.*

April 29, 2024, Petitioner again met with Dr. Goldvecht at LaClinica via telemedicine, who referred Petitioner for further care with an orthopedic specialist. PX2 at 179; PX4 at 8.

May 10, 2024-Petitioner began treating with Dr. Chaddia for orthopedic care at Illinois Orthopedic Network (“ION”). PX4 Dr. Chaddia noted that Petitioner worked as a custodian and was cleaning a toilet and felt a sharp, burning pain that radiated from his neck down his right shoulder. *Id.* at 27. Petitioner was noted to have been off work since the March 18, 2024 accident date due to no light duty work being available with ILSOS. *Id.*

Petitioner was noted to have completed thirteen weeks of therapy that was mildly helping with pain. *Id.* Petitioner reported to Dr. Chaddia that he had underwent an MRI of his right shoulder and that he was told he had damage to his rotator cuff and a possible tear. *Id.* Dr. Chaddia

did not have the MRI to review himself at the time of this visit. *Id.* Dr. Chaddia documented that there was no past medical history of note, and an unrelated past surgical history of a hernia repair and splenectomy in 1995. *Id.* Dr. Chaddia recommended continued physical therapy, continued off work due to lack of light duty availability, and diclofenac gel in addition to the cyclobenzaprine and naproxen he was already taking. *Id.* Injections were considered as the next option, followed by possible surgical options. *Id.*

May 13, 2024- Petitioner followed up with ION and Keith Welker, PA noted a diagnosis of right shoulder strain with associated diagnoses of subacromial bursitis, bicipital tendinitis, and rotator cuff tendinitis. *Id.* at 32. Petitioner was given a bursal injection. *Id.* Petitioner would continue to see PA Keith Welker on several occasions for continued treatment with ION, under the supervision of Dr. Chaddia.

May 20, 2024-Petitioner reported to Dr. Zaragoza at a chiropractic session that his pain was between a two to three out of ten and up to six out of ten pain level intensity, with repetitive shoulder movement triggering pain. PX2 at 40 Further therapy sessions were ordered. *Id.* at 41.

June 7, 2024-Petitioner was involved in a motor vehicle collision when another vehicle struck him on the driver's side.

June 10, 2024-Petitioner received a second biceps tendon sheath injection while treating at ION with PA Welker for a follow-up session. PX4 at 37. At this visit, he reported an increase in his pain to a throbbing eight out of ten level. *Id.* at 36. Petitioner did not report the motor vehicle collision just 3 days prior. It was noted that Petitioner had been "bent over to scrub off something vigorously" which caused sudden, sharp pain in the right shoulder and neck/trapezius area from that activity. *Id.*

June 19, 2024-Petitioner saw Dr. Zaragoza for chiropractic therapy and stated that the injection to the biceps region had provided him relief. PX2 at 54. He was told to continue therapy. *Id.* Petitioner reported right shoulder pain between one and five out of ten pain levels. *Id.*

June 20, 2024- Dr. Forsythe performed an independent medical examination of Petitioner. RX2.

Petitioner told Dr. Forsythe that he had injured his right shoulder on March 18, 2024 while cleaning a heavily soiled toilet. *Id.* at 2. Petitioner relayed that he had been required to scrape the toilet vigorously with a brush and the brush bent, causing sharp pain in his shoulder and neck. *Id.* Petitioner denied any prior history of right shoulder issues and claimed no prior treatment before

this date of accident for his right shoulder; however Dr. Forsythe had reviewed a right shoulder MRI that Petitioner had underwent in March 2017. *Id.* at 2, 4. Dr. Forsythe found that Petitioner was exhibiting mild to moderate symptom magnification. *Id.* Dr. Forsythe opined that Petitioner had sustained a causally related right shoulder strain and would benefit from four additional weeks of therapy before reaching maximum medical improvement (“MMI”) and full duty capabilities. *Id.* at 4-5. Dr. Forsythe opined that Petitioner could perform under temporary work restrictions of overhead lifting limited to five pounds and no overhead activity or repetitive right arm usage until therapy was completed and he returned full duty. *Id.* at 5.

July 8, 2024-Petitioner followed up with PA Welker at ION, continuing to complain of throbbing, sharp pain at an eight out of ten level that came and went throughout the day with moderate to severe aggravation of right shoulder pain when doing daily activities. PX4 at 41 Petitioner was told to continue therapy, taken entirely off-work, and was given a third bursal injection. *Id.* at 42-43.

July 17, 2024-Petitioner followed up with Dr. Zaragoza and reported persistent radiating pain in his right upper extremity. RX2 at 67. A home exercise program was discussed. *Id.*

July 18, 2024-Petitioner followed up with Dr. Zaragoza, noting that he was experiencing zero to three out of ten pain levels in his right shoulder and from zero to six out of ten pain levels in his neck. PX2 at 68. Ongoing therapy was recommended, and he was noted to be scheduled for another MRI. *Id.* at 69.

July 22, 2024-Petitioner had a telemedicine visit with Dr. Goldvecht to obtain valium in advance of his MRI due to claustrophobia. PX2 at 194.

July 24, 2024- Petitioner’s neck MRI revealed multilevel neural foraminal narrowing, severe on the right at C6-7 and severe on the left at C5-6 due to uncovertebral joint hypertrophy, and C5-6 moderate 4mm left paracentral osteophyte disc complex. PX6; PX2 at 142-143.

July 25, 2024-Dr. Zaragoza reviewed Petitioner’s MRI results and noted that the MRI was not clearly evident of right-sided nerve compression, so an EMG was ordered. PX2 at 72.

August 8, 2024-Petitioner underwent an EMG which was reviewed by Dr. Goldvecht and showed mild indications of carpal tunnel and cubital tunnel syndrome, but no cervical radiculopathy. PX2 at 146-147.

August 12, 2024- Petitioner again presented to PA Welker, where he continued to complain of eight out of ten level pain that was sharp and throbbing. PX4 at 54. The pain was described as

constant and he complained of muscle spasms. *Id.* at 54-55. PA Welker noted that Petitioner's cervical MRI findings showed significant foraminal narrowing on the right at C6-7, and on the left at C5-6. *Id.* at 55.

August 22, 2024-Petitioner began treating with Dr. Chunduri. PX4 at 59. Dr. Chunduri's office visit notes indicate that Petitioner reported that he was injured on March 18, 2024 when he was bent over and holding a cleaning scrub with his arm extended straight down 90 degrees from his body. *Id.* Petitioner reported that he was vigorously cleaning the toilet bowl in a vigorous circular motion with his shoulder while in that position, after which he noticed severe pain in his right shoulder. *Id.* Dr. Chunduri noted that Petitioner had diagnoses of cervicgia and right shoulder pain/sprain, with ongoing pain in his right shoulder. *Id.* at 60. Dr. Chunduri reviewed Petitioner's EMG results and opined that Petitioner's pain was likely originating from the right shoulder. *Id.* Dr. Chunduri indicated that this etiology was further supported by complete relief of pain after Petitioner underwent right shoulder cortisone injections. *Id.* He was referred to orthopedics for re-evaluation and discharged to follow up as needed with pain management. *Id.*

September 9, 2024-PA Welker saw Petitioner at ION and right shoulder arthroscopic surgery was recommended to address Petitioner's right shoulder complaints, to be performed by Dr. Chaddia. PX4 at 64-66.

September 18, 2024-Dr. Forsythe performed a second independent medical examination of Petitioner and determined that Petitioner was at MMI and capable of full duty work and had been since completing four additional weeks of therapy since his prior report of June 20, 2024. RX3 at 5. Dr. Forsythe again noted mild to moderate symptom magnification during physical examination and gave a diagnosis of a resolved shoulder strain. *Id.* at 4. Dr. Forsythe also reviewed Petitioner's 2017 MRI films for the right shoulder and compared them to the 2024 MRI films, noting that Petitioner's right shoulder in 2017 showed articular sided rotator cuff partial thickness tearing that was not visualized on the 2024 films. *Id.* at 3. Dr. Forsythe opined that the 2024 right shoulder MRI films actually showed an intact rotator cuff with mild tendinosis, which he deemed to be interval improvement from the 2017 MRI study. *Id.*

October 8, 2024- Alessandro Alternino, DC, a chiropractor at LaClinica, saw Petitioner for a follow-up chiropractic session and Petitioner still reported cervical tenderness affecting his right shoulder. PX2 at 104. Dr. Zaragoza subsequently documented a summary of chiropractic therapy

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services performed with Petitioner between March 22, 2024 and October 8, 2024, noting 83 sessions in that final summary of services. *Id.* at 105-123

October 14, 2024, ION Petitioner was released back to work at full duty without restrictions. PX4 at 72. A historical summary was added to the office visit notes that documented a “minimal to mild insignificant shoulder injury” in 2017 for which an MRI was obtained. *Id.* at 71. It was noted that Petitioner had fully recovered from that injury and was at full duty capacity for years prior to this new acute injury. *Id.* PA Welker reiterated that Petitioner had undergone three steroid injections with moderate transient relief and that surgery was recommended. *Id.* PA Welker recommended that therapy was to continue in the interim, along with current prescriptions. *Id.* at 72.

October 24, 2024 - Dr. Chaddia authored a narrative opinion letter responding to Dr. Forsythe’s September 18, 2024 IME report findings. PX8 at 31; PX4 at 76. Dr. Chaddia opined that Petitioner’s action of “vigorously scrubbing” resulted in a complete rotator cuff tear in the right shoulder and a need for right shoulder surgery. RX8 at 7, RX4 at 76.

November 11, 2024- Petitioner saw PA Welker again at ION, and all prior recommendations were reiterated at this visit. PX4 at 78 No further treatment was submitted into evidence.

Deposition of Dr. Chaddia

Dr. Chaddia was deposed on February 26, 2025. PX8 Dr. Chaddia testified that he was Petitioner’s treating physician for orthopedic care beginning on May 10, 2024. *Id.* at 7. Dr. Chaddia acknowledged that PA Welker treated Petitioner at many of Petitioner’s appointments, but indicated that he would sign off on reports, consult with PA Welker, and would occasionally meet with Petitioner at office visits. *Id.* at 10-11. Dr. Chaddia indicated that he was given a copy of Dr. Forsythe’s September 2024 IME report and that he disagreed with the findings in that report and had authored his own findings in a chart note accordingly. *Id.* at 6-8. Dr. Chaddia opined that Petitioner requires surgery based his April 24, 2024 MRI findings and that it would be related to his March 18, 2024 workplace accident. *Id.* at 7-8. Dr. Chaddia further opined that chiropractic therapy Petitioner had undergone was not excessive, as opined in Dr. Forsythe’s report. *Id.* at 8.

Dr. Chaddia did admitted that he has never reviewed Petitioner’s chiropractic care records. PX8 at 10. Dr. Chaddia also acknowledged that he did not have an appointment scheduled with Petitioner on October 14, 2024 when he authored a narrative opinion letter regarding

disagreements with Dr. Forsythe's IME report findings. *Id.* at 12-13. Dr. Chaddia indicated that he had issued the narrative letter to "justify" his treatment recommendations for Petitioner. *Id.* Dr. Chaddia was aware that an MRI of Petitioner's right shoulder had been performed back in 2017, but he had never seen the films or the report related to that prior MRI. *Id.* at 13-15. Dr. Chaddia maintained that his opinions on the necessity for surgery as outlined in his narrative opinion letter remained unchanged and he still believed the shoulder surgery was necessary and related to Petitioner's March 18, 2024 work injury. *Id.* at 7-8. When asked about the mechanism of injury on cross-examination, Dr. Chaddia indicated that repetitive forceful loading of the shoulder is a common injury, but he could not pinpoint the frequency with which scrubbing might trigger this sort of injury. *Id.* at 15-17. Dr. Chaddia indicated that his office had likely released Petitioner to return to work at full duty on October 14, 2024 despite his surgical recommendations letter being issued ten days later, simply because Petitioner may have asked for the release so he could return to work and get a paycheck. *Id.* at 12.

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).

Petitioner had several points of inconsistency in his testimony at trial. Petitioner gave different versions of how his right shoulder injury occurred on several occasions. He told Concentra the date of the accident that he was using a plunger and pulling back on it hard, but his provider injury alert from GBCare on that same date and received by Concentra documented that the toilet brush he was using bent at the time the pain began.

Petitioner testified the brush broke entirely. At other times, Petitioner asserted that he had been scrubbing vigorously and felt the onset of pain from that alone. With Dr. Chunduri, he went into extensive detail that differed from prior accounts, stating that he was bent over and holding a cleaning scrub with his arm extended straight down 90 degrees from his body and was vigorously cleaning a toilet bowl in a vigorous circular motion with his shoulder.

Petitioner also appears to omit information at times, such as relaying to Dr. Forsythe that he had no history of shoulder issues pre-accident, despite Petitioner having previously undergone a 2017 MRI for the right shoulder. He furthermore failed to mention to Dr. Forsythe or any of his own providers that he was involved in a motor vehicle collision June 7, 2024. This is despite seeing Dr. Forsythe for his first IME appointment less than two weeks after the collision and actively treating for his neck and right shoulder with his own providers just days after that accident occurred. While Petitioner denied at trial that his neck or right shoulder were impacted by that auto accident his treatment records afterward showed significant increases in reported pain levels from just prior to the collision.

Petitioner also described the incident at a “medium impact” level and testified that he saw his primary care provider the same day as the accident while he was there for a pre-schedule appointment, but he did not put those records into evidence. Without them, and with no mention of the accident at all to any other provider in evidence, it is impossible to be sure if Petitioner’s neck and right shoulder were truly unaffected by this motor vehicle accident. Petitioner’s failure to tell any medical provider, treating him for the work injury about his motor vehicle collision and failure to produce any records of his treatment for the motor vehicle collision prevents the Arbitrator from obtaining a clear and complete understanding of his current condition.

Thus, the Arbitrator finds Petitioner’s testimony credible, but not very persuasive due to the inconsistencies as described above.

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." International Harvester v. Industrial Com., 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

In this case, while the evidence supports that Petitioner sustained a work-related strain injury to his right shoulder on March 18, 2024, there is insufficient evidence to support any injury beyond a strain/sprain or temporary aggravation of underlying conditions.

Petitioner's own treaters, Dr. Chaddia, admitted at his deposition that he had not reviewed the pre-injury MRI of Petitioner's right shoulder from 2017. This is critical, as Dr. Forsythe did review the 2017 MRI report and the related films and compared them against Petitioner's 2024 MRI findings when making his determinations. Dr. Forsythe opined that the two MRIs had the same findings apart from observing mild improvements to Petitioner's right shoulder condition in the 2024 MRI as compared to the prior 2017 MRI films. This supports Dr. Forsythe's finding that no acute injury had occurred since the 2017 injury. Conversely, Dr. Chaddia never reviewed that pre-existing diagnostic imaging before formulating his medical opinions. Additionally, Petitioner's 2024 MRI radiology report and Dr. Forsythe's review of the MRI films both did not find evidence of a full thickness tear, contrary to the findings made by Dr. Chaddia, regardless of Petitioner's pre-accident right shoulder condition. Dr. Chaddia also did not begin treating Petitioner until after Petitioner had been treating with Dr. Zaragoza for chiropractic services for several months and yet he did not review those earlier treatment records prior to formulating his causation opinions.

Dr. Zaragoza also gave a causal connection opinion related to Petitioner's March 18, 2024 accident. However, Dr. Zaragoza referenced a motor vehicle accident as being the mechanism of injury, not a workplace cleaning incident. This causation opinion is muddled due to this error. Additionally, Dr. Zaragoza is a chiropractic doctor. Dr. Zaragoza gave a causation opinion that Petitioner's condition was related to a March 18, 2024 accident based upon a "reasonable degree of medical and chiropractic certainty", despite lacking the requisite medical physician expertise for providing opinions based upon "medical" certainty. The Arbitrator therefore finds Dr. Zaragoza's medical findings to be less persuasive than those found by Dr. Forsythe, who is an orthopedic surgeon.

The Arbitrator finds the extent of treatment undergone, 86 chiropractic therapy sessions, to have been an excessive amount of time to undergo therapy, in agreement with Dr. Forsythe's findings in his second report. Additionally, Petitioner returned to work full duty in October 2024 and has continued to work in that capacity. While Petitioner testified that sometimes he is in pain and leaves work early, he did not specify the frequency of those complaints, how many hours or days he had taken off related to those complaints since returning to work at full duty, or the intensity of those complaints. He also did not testify that any provider was presently authorizing him to be off work related to those ongoing complaints.

Thus, the Arbitrator finds that Petitioner failed to prove by the preponderance of evidence that his current condition of ill-being is causally of his right shoulder is related to the March 18, 2024 accident and that Petitioner reached full duty and MMI for all causally connected conditions as of September 18, 2024, as opined by Dr. Forsythe.

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

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

The Arbitrator does find that Petitioner presented sufficient, credible evidence that he received reasonable and related medical care up through September 18, 2024 (MMI) and thereby incurred medical expenses as a result of his accident.

Dr. Chaddia's September 9, 2024 office visit resulted in a \$150 balance due from Petitioner, but no receipt or payment on the face of the bill supports that this was actually ever paid by Petitioner. PX7 The statement appears to show that the balance remains outstanding, but it is not a properly coded bill sufficient for fee scheduling data nor is it clear what exactly the services were that the bill accounts for. *Id.* Likewise, Midwest Specialty Pharmacy LLC's outstanding balances are referenced as a Patient Account Summary, rather than being an actual bill containing the necessary data coding sufficient for Respondent to be reasonably expected to process same for payment at fee schedule medical rate. PX5

Based on the foregoing, the Arbitrator finds that Respondent is liable for outstanding medical expenses in PX1, PX2, PX3, and PX4 for dates of service spanning March 18, 2024 through September 18, 2024, to be payable directly to the providers therein and subject to fee schedule medical rate. No further medical expenses are awarded and per the parties' stipulation, the Respondent shall receive a credit for medical already paid.

Issue K, whether Petitioner is entitled to any prospective medical care, the Arbitrator finds as follows:

Petitioner has been recommended by Dr. Chaddia for right shoulder surgery, which Dr. Chaddia has related to Petitioner's workplace accident. Notwithstanding, this procedure does not appear to be related to the workplace accident. Moreover, Petitioner's MRI findings according to interpretations by Dr. Forsythe shows objective improvement on the right shoulder. The MRI findings from the 2024 radiologist report did not document a rotator cuff tear either, despite Dr. Chaddia's indication that a rotator cuff repair is indeed needed.

The Arbitrator finds Dr. Forsythe's MRI opinions more persuasive, wherein he found incremental improvement in Petitioner's 2024 right shoulder MRI films as compared to Petitioner's 2017 right shoulder MRI films.

Petitioner additionally has been working full duty since October 11, 2024 without being taken back off-work by any medical provider and without any significant period that Petitioner has opted to take himself out of work either. As this Arbitrator finds the opinions of Dr. Forsythe

Donald Lewis v. Illinois Secretary of State
Case No. 24WC008080

to be more persuasive compared to the other medical opinions in evidence, the Arbitrator therefore finds that the Petitioner has reached MMI with full duty capabilities and that his ongoing subjective complaints do not warrant the need for surgery, work-related or otherwise.

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

The Arbitrator declines to impose any penalties and fees.

It is so ordered:

Crystal L. Caison

Arbitrator Crystal L. Caison

AUGUST 6, 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC005812
Case Name	Roger Hetge v. Alton Community Unit School District 11
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Corrected Commission Decision
Commission Decision Number	26IWCC0044
Number of Pages of Decision	21
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	David Galanti
Respondent Attorney	Matthew Terry

DATE FILED: 2/13/2026

/s/ Frank Soto, 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)
☐ Modify	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Roger Hetge,

Petitioner,

vs.

NO: 24 WC 5812

Alton Community Unit School District 11,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 29, 2025 is hereby affirmed and adopted.

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

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

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.

There is no bond for the removal of this cause to the Circuit Court by Respondent pursuant to §19(f)(2) of the Act. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 13, 2026

O: 1/28/26

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	24WC005812
Case Name	Roger Hetge v. Alton Community Unit School District 11
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	18
Decision Issued By	Jeanne AuBuchon, Arbitrator

Petitioner Attorney	David Galanti
Respondent Attorney	Matthew Terry

DATE FILED: 5/29/2025

/s/Jeanne AuBuchon, Arbitrator
Signature

INTEREST RATE WEEK OF MAY 28 2025 4.16%

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)

Roger Hetge
 Employee/Petitioner

Case # **24** WC **005812**

v.

Consolidated cases: _____

Alton Community Unit School District 11
 Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Jeanne L. AuBuchon**, Arbitrator of the Commission, in the city of **Collinsville**, on **4/21/2025**. 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, **11/30/2023**, 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 **\$96,820.74**; the average weekly wage was **\$2,151.57**.

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

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$1,434.38/ week for 18 and 4/7 weeks, commencing December 1, 2023, through April 8, 2024, as provided in Section 8 (b) of the Act.

Petitioner is entitled to the prospective medical treatment, specifically total knee replacement surgery and follow-up care as recommended by Dr. Solman.

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

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice 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

MAY 29 2025

PROCEDURAL HISTORY

This matter proceeded to trial on April 21, 2025, pursuant to Sections 19(b) and 8(a) of the Illinois Workers' Compensation Act (hereinafter "the Act"). The issues in dispute are: 1) whether the Petitioner sustained accidental injuries that arose out of and in the course of employment; 2) the causal connection between the accident and the Petitioner's left knee condition; 3) entitlement to prospective medical care to the Petitioner's left knee; and 4) entitlement to TTD benefits.

The parties stipulated that the bill from urgent care – potentially the sole remaining unpaid medical bill in Petitioner's Exhibit 9 – will be paid pursuant to the fee schedule.

FINDINGS OF FACT

At the time of the accident, the Petitioner was 56 years old and employed by the Respondent as an assistant principal for 18 years. (T. 11) On November 30, 2023, he was breaking up a fight, during which he twisted or turned and ended up on the ground on top of a student he was trying to cover while another student was hitting and kicking the student on the ground. (T. 12-13) The Petitioner testified that when he hit the ground, he came down on his left knee. (T. 16) The Petitioner submitted videos of the fight from two different angles. (PX1) The Petitioner said he had an abrasion on his knee and later started feeling sharp pains in his knee. (T. 20-21)

The Petitioner testified that prior to the incident, he had no problems with nor treatment for his left knee. (T. 22) Prior records from the Petitioner's primary care providers at BJC Medical Group Primary Care show that he was being treated for hypertension, anxiety, Type 2 diabetes with hyperlipidemia, low back pain, sleep apnea and morbid obesity. (PX4, RX2) He was taking medication for hypertension and diabetes. (Id.)

The morning after the incident, the Petitioner sought treatment from Alton Urgent Care. (T. 22) He was given pain medication and orders for X-rays. (PX2) The X-rays were performed that day at BrightWay Imaging and were negative for fractures. (PX3)

On December 4, 2023, the Petitioner followed up with his primary care physician, Physician Assistant Michele Brannan at BJC Medical Group at Alton Memorial Hospital. (T. 22-23, PX4, RX2) He complained of knee pain and said he was breaking up a fight and fell on his left knee. (PX4, RX2) PA Brannan ordered an MRI and referred the Petitioner to orthopedics. (Id.)

The MRI was performed on December 18, 2023, at Alton Memorial Hospital Twin Rivers MRI Center. (PX3, PX5) It showed: an incomplete undersurface tear of the left lateral meniscal body posterior horn junction; mild-to-moderate patellofemoral predominant tricompartmental left knee chondrosis; and small left knee effusion. (Id.)

The Petitioner presented to Dr. Aaron Omotola, an orthopedic surgeon at BJC Medical Group Orthopedics and Sports Medicine on January 5, 2024, and complained of left knee pain that was moderate during the day and severe at night. (PX5) After an examination and review of the MRI, Dr. Omotola diagnosed a tear of the lateral meniscus of the left knee and recommended arthroscopic knee surgery with meniscectomy. (Id.) The surgery was performed on January 23, 2024. (PX6) The Petitioner began physical therapy on January 29, 2024, at Alton Physical Therapy. (PX7)

The Petitioner testified that he had short-term improvement with his left knee following the surgery. (T. 26) He said his pain has continued but the surgery lessened the sharpness. (T. 26-27) He said that following the surgery, there was a lot of instability in his knee, and he would have to stand up and pop his knee 20-30 times a day for it to be stable. (T. 27-28, 30)

At his physical therapy visit on February 19, 2024, the Petitioner reported a really tender/painful spot along the distal lateral hamstring and that he had been experiencing painful popping with movement that had worsened since surgery. (PX7)

Also on February 19, 2024, the Petitioner also followed up with Physician Assistant McKenzie Youngblood at Dr. Omotola's office. (PX5) PA Youngblood stated that the popping and pain were due to a combination of the lateral meniscectomy, underlying advanced arthritis that flared up secondary to the surgery, tight hamstrings and the patella chondroplasty. (Id.) She stated that physical therapy takes several weeks to take effect and the Petitioner needed to keep taking his pain medications, stretching, icing, taking anti-inflammatories and wearing his knee brace. (Id.) She said that if his pain did not improve with physical therapy and time, it is due to flare up of underlying arthritis, which can happen sometimes after a surgery. (Id.) She said she could then offer injections, as he was not eligible for a total knee replacement due to his weight. (Id.)

The Petitioner underwent imaging on February 23, 2024, for pain behind his knee. (PX3) No left lower extremity deep venous thrombosis was found. (Id.)

The Petitioner participated in physical therapy for a total of 16 visits. (PX7) At his last visit on March 6, 2024, it was noted that he was experiencing painful popping and had a painful palpable knot the size of a pea along the posterior lateral knee. (Id.)

An MRI was performed on April 3, 2024, at Alton Memorial Hospital Twin Rivers MRI Center. (PX3, PX5) It showed: 1) incomplete oblique undersurface linear high signal of the left lateral meniscus posterior horn body junction, similar to prior exam; 2) mild to moderate patellofemoral predominant tricompartmental left knee chondrosis; and 3) small left knee effusion. (Id.) There was a notation that the Petitioner stated that a steroid pack was "really helping" with

his pain. (Id.) The Petitioner had no pain during treatment and was able to walk eight minutes. (Id.) He demonstrated difficulty with lateral and forward dips. (Id.)

At a post-operative visit on April 8, 2024, the Petitioner reported that his symptoms had not been improving – that he had pain and instability limiting his ability to perform day-to-day activities, such as walking more than five minutes at a time or climbing or descending stairs. (PX5, RX9) PA McKenzie Youngblood reported that the recent MRI was negative for surgical pathology or acute findings, did show osteoarthritic changes and was otherwise unremarkable. (Id.) PA Youngblood recommended a cortisone injection to help bring down inflammation and help with the pain. (Id.) She also discussed with the Petitioner that he may benefit from referral to pain management for consideration of radiofrequency nerve ablation and would ultimately benefit from a total knee replacement, but he was not considered a surgical candidate at that time due to his elevated body mass index (BMI). (Id.) She stated that to be a surgical candidate for a total knee replacement, BMI would need to be 40 or below. (Id.) She also said the Petitioner would benefit from continued physical therapy to work on strength and improving stability of the knee. (Id.)

PA Youngblood said the Petitioner could return to work with restrictions of no stairs, no breaking up any type of altercation, using the elevator, no walking more than five minutes at a time and being able to take frequent breaks as needed. (Id.) She said the Petitioner should continue with further conservative management including NSAIDs, Tylenol, ice, heat and avoidance of aggravating activity. (Id.)

The Petitioner testified that he missed work from December 1, 2023, through April 8, 2024, returning to work in a light duty capacity on April 9, 2024. (T. 23-24) He said he was given the option to take workers' compensation benefits or sick leave and opted for sick leave because he

was concerned about the amount of pay he would receive from workers' compensation so he could pay his bills. (T. 24-26) He took the sick leave option on December 14, 2023. (RX4)

The Petitioner testified that he declined either pain management or an injection because he was told relief would only be temporary. (T. 28-29) He said he did not think that Dr. Omotola declining to perform a total knee replacement was due to his weight. (T. 36) He did believe Dr. Omotola's office told him his continued symptoms were related to underlying osteoarthritis and weakness in his knee. (T. 36) He acknowledged having high blood pressure and high A1C, as well having high cholesterol in the past. (T. 39-40)

At another post-operative visit on April 14, 2024, the Petitioner informed PA Youngblood that he did not want an injection or pain management referral at that time and wanted to be released to be able to return to his normal activities because he was tired of sitting at home. (RX9) He said that working with restrictions had gone well, and the Respondent was accommodating him. (Id.) PA Youngblood released him without restriction but left open the options of an injection and pain management. (Id.)

The Petitioner next sought treatment on August 9, 2024, from Dr. Corey Solman, an orthopedic surgeon at CGS Ortho. (PX8) He reported that his knee had gotten continually and progressively painful since the surgery. (Id.) He said the knee would get stuck when he is stationary and will pop and cause pain. (Id.) He said he limped at times and could not kneel or squat. (Id.) He said it was hard to get up from a seated position, that he had some pain when driving for prolonged periods of time, had to hang on when he went up and down stairs, had some night pain when his knee was in a bad position, had increased pain with walking, did not have any swelling in the knee and did feel grinding in the knee with range of motion. (Id.)

Dr. Solman performed an examination, took X-rays and reviewed the two MRIs. (Id.) He stated that the April 3, 2024, MRI showed advanced chondrosis in all three compartments that appeared to have worsened slightly since the December 18, 2023, MRI. (Id.) He believed the injury of November 30, 2023, was the substantial contributing factor to the meniscus tear and in making the Petitioner's asymptomatic chondrosis condition in the left knee symptomatic. (Id.) He also believed the injury and subsequent surgery were the substantial contributing factors in irreversibly accelerating the osteoarthritis in the left knee, leading to the need for treatment. (Id.)

Dr. Solman stated that the Petitioner could consider injections in an attempt to decrease inflammation and improve his pain, but that the Petitioner would rather move forward with a total knee replacement. (Id.) Dr. Solman believed surgery was a reasonable option to consider, given the Petitioner's symptomatology of having some giving-way sensations and popping and grinding of the knee. (Id.) The Petitioner was very confident that he would do well with total knee replacement, as he did extremely with a right hip replacement four years prior. (Id.) They did discuss alternatives – including injections, physical therapy and medications – but the Petitioner wished to proceed with surgery so he could get his knee feeling better and be able to do all activities as tolerated. (Id.)

Regarding work restrictions, Dr. Solman stated that because the Petitioner was retired, he did not believe he required any. (Id.) On November 21, 2023, the Petitioner submitted his retirement resignation effective at the end of the 2023-2024 school year. (RX3)

The Petitioner underwent a Section 12 examination on September 25, 2024, performed by Dr. W. Chris Kostman, an orthopedic surgeon at Performance Orthopedics. (RX1, Deposition Exhibit 2) The Petitioner described the accident consistent with his testimony and reports to the other medical providers. (Id.) Dr. Kostman stated that the Petitioner denied "any other associated

injury to his left knee other than a direct anterior impact.” (Id.) He denied any prior knee problems. (Id.) He discussed the surgery and said that after physical therapy, his left knee symptoms were 30 percent better. (Id.) At the time of the examination, the Petitioner reported his pain at night and going up and down stairs – both prior to and after the surgery – was similar to his current symptoms. (Id.) He also described some popping, snapping and grinding sensation and giving-way sensation, along with numbness and weakness of his left leg. (Id.)

Dr. Kostman took X-rays and reviewed arthroscopic images from the surgery, the Application for Adjustment of Claim, incident reports from the Respondent, urgent care records, X-rays from BrightWay Imaging, primary care records from BJC Medical Group, MRI films from December 18, 2023, records from Dr. Omotola’s office, Dr. Omotola’s operative note, physical therapy records, MRI films from April 3, 2024, and Dr. Solman’s records. (Id.)

On the December 18, 2023, MRI, Dr. Kostman saw significant patellofemoral degenerative change, chondromalacia, possible meniscus tear, osteophyte formation involving the medial femorotibial joint line, tricompartmental degenerative change, no evidence of traumatic injury and no bony edema. (Id.)

On the arthroscopic images from the surgery, Dr. Kostman noted: chondromalacia degenerative change involving the medial compartment: apparent intact anterior cruciate ligament (ACL) with some erythema; lateral compartment appearing to demonstrate some meniscal fraying along its free edge with a shaver adjacent to that position; chondromalacia involving the lateral femoral condyle, lateral tibial plateau, medial femoral condyle, medial tibial plateau, patella and trochlear groove; and no evidence of trauma to the patella femoral compartment, medial or lateral joint line. (Id.) He said the chondromalacia in all three compartments appeared similar, being grade 2/grade 3. (Id.)

On the April 3, 2024, MRI, Dr. Kostman saw advanced degenerative change involving the patellofemoral joint, post-operative changes in the lateral meniscus, and medial and lateral degenerative change within the femorotibial joint. (Id.) He noted no significant change over the prior MRI. (Id.)

Dr. Kostman diagnosed a lateral meniscus tear and left knee chondromalacia. (Id.) He said the Petitioner did not have a twisting injury to his left knee and said evaluators did not note any mechanical symptoms to the left knee. (Id.) He did not believe that the meniscus tear was caused by the work accident because a direct impact to the knee is not a mechanism of developing a meniscus tear, adding that traumatic meniscus tears typically demonstrate mechanical symptoms and not anterior knee pain and night pain. (Id.) He also did not believe the findings of chondromalacia were caused or permanently aggravated by the accident, stating that the degree of chondromalacia was consistent along all three compartments, which is not consistent with a traumatic cause. (Id.) He said the X-ray findings of medial femorotibial joint space narrowing and patellofemoral degenerative change are not consistent with a traumatic cause. (Id.) He said the MRI scan did not demonstrate evidence of an anterior impact – no bony contusion – as would be seen with significant trauma. (Id.) He said that neither the operative note nor images demonstrated traumatic chondral damage.

Regarding future treatment, Dr. Kostman did not believe the Petitioner required medical treatment for his left knee. (Id.) He recommended management of the left knee chondromalacia with nonsteroidal anti-inflammatory medications and weight loss. (Id.) He did not believe the Petitioner was a specific candidate for a total knee replacement with grade 2/3 findings of chondromalacia involving the left knee, obesity and taking ibuprofen. (Id.) He said that although the Petitioner could elect to have a knee replacement, he did not believe the need for that treatment

is reasonable, related to or necessary as to the work accident. (Id.) He said the Petitioner's left knee was symmetric with his right knee and consistent with his history of osteoarthritis involving his knees, right hip, BMI and medical history. (Id.) He said the Petitioner was at maximum medical improvement for the work accident as of the date of the Section 12 examination. (Id.)

The Petitioner retired on June 30, 2024. (T. 37)

Dr. Solman testified consistently with his records at a deposition on February 25, 2025. (PX10) He explained that one reason for the increase in the chondrosis in the Petitioner's knee from the December 18, 2023, MRI to the April 23, 2024, MRI is trauma, which can cause irreversible acceleration of arthritis changes and advancing of chondrosis or cartilage thinning. (Id.) He said the other reason could have been the surgery performed by Dr. Omatola. (Id.) He explained that when meniscal tissue is removed from a compartment, that articular cartilage sees more stress and force on it and that, in and of itself, can also cause acceleration of the chondrosis and can lead to the symptomology the Petitioner was experiencing. (Id.) He said the meniscus is the shock absorber of the knee, providing shock absorption to the articular cartilage over the joint surface. (Id.) He said that a lateral meniscectomy, such as the Petitioner had, reduces the size of the shock absorber and increases the pressure on the weight-bearing areas. (Id.)

As to the mechanism of the Petitioner's injury, Dr. Solman thought the Petitioner was forcing or placing a lot of stress on the knee trying to break up the fight and fell to the ground. (Id.) He said the accident potentially resulted in two different mechanisms – a strain and/or possible twisting injury and a fall directly impacting the knee. (Id.) Dr. Solman acknowledged that he had not reviewed any history of an actual twist of the knee. (Id.) He did not think a direct blow injury is a mechanism that would necessarily create a meniscus tear, adding that if the Petitioner's foot twisted and/or he strained the knee trying to break of the fight prior to falling, that

can place a strain on the meniscus. (Id.) He said there does not have to be a twisting injury to cause a lateral meniscus tear, rather an “axial load” type of injury can occur where force is being imparted through a joint. (Id.) He believed that breaking up a fight can cause that mechanism. (Id.) As to the damage to the Petitioner’s cartilage, Dr. Solman said the fall itself, by striking the knee, can cause damage to the articular cartilage both on the undersurface of the kneecap and on the surfaces of the thigh bone where the kneecap is articulating. (Id.)

Regarding the Petitioner’s choice to proceed with a total knee replacement rather than further conservative treatment, Dr. Solman thought that if a patient has enough of a sensation significant enough to affect all their activities, it is reasonable to proceed with a knee replacement. (Id.) He stated that he would not say that a patient with a BMI over 40 is not a candidate for a total knee replacement, adding that some institutions will set cutoffs of 45, 39 if the patient is diabetic or 37 if the patient has hypertension and diabetes to mitigate risk. (Id.) Dr. Solman said he has performed a total knee replacement on someone with the Petitioner’s BMI. (Id.)

Dr. Kostman testified consistently with his report at a deposition on March 12, 2025. (RX1) He explained that chondromalacia is the same as arthritis. (Id.) He reiterated the rationale for his opinion that the meniscus tear was not causally related to the accident because the Petitioner did not describe a twist injury and the doctors did not note mechanical symptoms in the left knee, adding that degenerative peripheral meniscus tears are common with grade 2/3 chondromalacia and are not traumatic. (Id.) As to the chondromalacia, Dr. Kostman again stated that the degree of chondromalacia was consistent along all three compartments and there was no evidence of traumatic changes on the imaging or operative records. (Id.) Dr. Kostman also believed that the January 23, 2024, surgery did not cause or permanently aggravate or accelerate the Petitioner’s arthritic condition. (Id.)

On cross-examination, Dr. Kostman admitted that he has performed total knee replacements on patients with the Petitioner's BMI and that weight alone does not completely contraindicate such a procedure. (Id.) He said it is possible, but not typical, for someone with grade 2/3 chondromalacia to be asymptomatic and become symptomatic following "substantial trauma." (Id.) He said it is possible for someone who has a shave or debridement of loose cartilage to increase arthritis in the knee, adding that it is not typically a significant advancement. (Id.)

The Petitioner testified that he wants to have the surgery to get his life back, relieve the pain and be able to sleep. (T. 29) At the time of arbitration, the Petitioner rated his pain at 6/10 but said it was 9/10 the day before. (T. 30-31)

CONCLUSIONS OF LAW

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

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

There is no dispute that the Petitioner was breaking up a fight and fell. The dispute as to accident is the mechanism of injury – specifically, whether the way in which the Petitioner fell caused the injury to the Petitioner's left knee. The Arbitrator finds this is a causation issue and not an accident issue. The issue of the mechanism of injury will be addressed below in the causation analysis.

Therefore, the Arbitrator finds that an accident arose out of and in the course of the Petitioner's employment by the Respondent.

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

An accident need not be the sole or primary cause as long as employment is a cause of a claimant's condition. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill.Dec. 70 (2003). An employer takes its employees as it finds them. *St. Elizabeth's Hosp. v. Workers' Comp. Comm'n*, 371 Ill.App.3d 882, 888, 864 N.E.2d 266, 309 Ill.Dec. 400 (5th Dist. 2007). A claimant with a preexisting condition may recover where employment aggravates or accelerates that condition. *Caterpillar Tractor Co. v. Industrial Comm.*, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 65 Ill.Dec. 6 (1982).

When a preexisting condition is present, a claimant must show that "a work-related accidental injury aggravated or accelerated the preexisting [condition] such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *St. Elizabeth's Hospital*, 371 Ill.App.3d at 888.

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

The Petitioner had degeneration in his left knee that predated the accident. The question is whether this was the only cause of his condition or whether the accident contributed to or aggravated the condition.

The Arbitrator first considers the meniscus tear in the Petitioner's left knee. In forming his opinion that the tear was not causally related to the accident, Dr. Kostman, relied on the Petitioner not describing a twist injury and the doctors not noting any mechanical symptoms in the left knee. Dr. Solman believed that two mechanisms could have resulted in the Petitioner's meniscal tear – twisting and an “axial load” type of injury.

Neither doctor reviewed the videos of the accident. The Arbitrator has reviewed them. One only shows the fall where the Petitioner's knee struck the ground. The other video shows the Petitioner struggling to restrain the student but does not show the lower part of his body. The intensity of the struggle shown on the videos lead to the conclusion that it was more likely than not that there was twisting and force involved that would have at least caused an aggravation to an existing meniscal tear, if not causing the tear itself.

Dr. Kostman's observation of no mechanical symptoms being described does not negate the fact that the Petitioner's meniscus was, in fact, torn.

Regarding the damage to the cartilage in the Petitioner's knee, Dr. Kostman's causation opinion relied on the degree of chondromalacia being consistent along all three compartments and there being no evidence of traumatic changes on the imaging or operative records. Dr. Solman said the fall itself, by striking the knee, can cause damage to the articular cartilage. He also said the meniscus surgery itself could have accelerated the damage to the cartilage. Both of these explanations are reasonable.

The circumstantial evidence supports a finding of causation. Although the Petitioner had degeneration in his knee, he was having no problems prior to the accident and was able to fully perform his duties. After the accident, the Petitioner's knee became symptomatic, and he experienced decreased ability to perform his full duties. Also, the Petitioner's symptoms increased

and the nature of his symptoms – instability and popping – changed after the surgery, which further supports a finding, per Dr. Solman’s explanation, that the surgery accelerated the degenerative condition of his knee. Considering the circumstantial evidence, the Arbitrator finds that it is more likely than not that Dr. Solman’s opinions more accurately reflect that the accident, at a minimum, was a contributing factor to the Petitioner’s knee condition.

Therefore, the Arbitrator finds that the Petitioner has proven by a preponderance of the evidence that his current left knee condition is causally related to the accident of November 30, 2023.

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).

Aside from his opinion that further treatment would not be causally related to the accident, Dr. Kostman did not believe a total knee replacement should be performed because the Petitioner’s comorbidities of obesity and diabetes posed an undue risk. However, he acknowledged that he has performed such a procedure on obese patients.

Dr. Solman believed it is reasonable to proceed with a total knee replacement, considering the severity of the Petitioner’s current symptoms. The Arbitrator gives greater weight to Dr. Solman’s opinions regarding future treatment. It can be assumed that, as the treating physician, Dr. Solman has weighed the risks and benefits of surgery and will abide by his oath to do no harm to his patient.

Therefore, the Arbitrator finds that the Petitioner is entitled to prospective medical care for his left knee, specifically a total knee replacement as recommended by Dr. Solman. The Respondent shall authorize and pay for such.

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

"The fundamental purpose of the Act is to provide injured workers with financial protection until they can return to the work force." *Interstate Scaffolding, Inc., v. Illinois Workers' Compensation Comm'n*, 236 Ill.2d 132, 146, 923 N.E.2d 266, 337 Ill.Dec. 707 (2010). "Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force." *Id.*

The Respondent disputes the Petitioner's entitlement to TTD benefits based on a lack of causation. Based on the findings above regarding causation, the Arbitrator finds the Petitioner is entitled to temporary total disability benefits pursuant to Section 8(b) of the Act for 18 and 4/7 weeks, from December 1, 2023, through April 8, 2024.

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	22WC028275
Case Name	Daniel Gamboa v. Flexicorp, Inc.
Consolidated Cases	22WC028276
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0045
Number of Pages of Decision	37
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Christopher Bassmaji
Respondent Attorney	Michael J. Danielewicz

DATE FILED: 2/17/2026

/s/ Kathryn Doerries, Commissioner
Signature

22 WC 028275

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL GAMBOA,

Petitioner,

vs.

NO: 22 WC 028275

FLEXICORP, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, TTD, medical expenses, and penalties, and being advised of the facts and law, reverses in part and 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 vs. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

The Commission affirms and adopts the Arbitrator's findings and conclusions regarding the issues of causation and temporary partial disability (TPD) benefits; however, the Commission views the evidence and law differently than the Arbitrator as to the remaining issues, and therefore, reverses in part and modifies the Arbitrator's Conclusions of Law regarding Issues (J), (L), and (M), as set forth below.

Regarding Issue (J), the Commission affirms the Arbitrator's award of the reasonable and necessary medical expenses. Although Respondent did not claim a credit under §8(j) of the Act on the Request for Hearing, Respondent wrote, "See attached medical ledger as Respondent's Exhibit 1." (AX1a) The Commission finds Respondent claimed a credit for paid medical expenses and introduced into evidence a payment ledger showing payments made set forth in RX1, and

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therefore, the Commission modifies the decision of the Arbitrator and awards Respondent a credit for any medical expenses it paid.

Regarding Issue (L), the Arbitrator awarded temporary total disability benefits of \$507.21/week for 18-3/7 weeks, commencing October 14, 2022 through February 20, 2023, as provided in Section 8(b) of the Act. The commencement date coincided with the left shoulder surgery performed by Dr. Tu. The end-date coincided with the date Petitioner returned to work with light duty restrictions. In its Statement of Exceptions and supporting brief, Respondent argues the award of TTD benefits should be vacated because it paid TTD benefits for this period of time. Substantively, this argument presents a claim for credit. Respondent refers to a TTD payment ledger without citation to the record, and based upon our review of the evidentiary record, the Commission finds Respondent failed to admit a TTD payment ledger into evidence. The transcript is devoid of any evidence showing the dates or weeks when TTD benefits were paid or the rate at which benefits were paid. The Commission further notes that Respondent failed to enter a dollar amount showing payment of TTD benefits in response to paragraph #9 on the Request for Hearing form. Nevertheless, Petitioner testified to receiving “off work benefits” for his left arm injury. (T. 26) Generally, a party has waived an issue at arbitration where the party failed to raise the issue on the Request for Hearing and also failed to raise the issue during the arbitration hearing. See *Heck vs. State of Illinois, Central Management Services*, 14 IWCC 539; 2014 Ill. Wrk. Comp. LEXIS 632, where the Commission determined: “As those issues were not raised at-arbitration *or* on the parties Request for Hearing, they are deemed waived.” (Emphasis added.) As the payment of TTD benefits was confirmed during the arbitration hearing, and as the issue of credit was raised in Respondent’s Statement of Exceptions and brief, we find the issue preserved for review. To avoid unfair windfall due to potential double payment of TTD benefits, the Commission modifies the decision of the Arbitrator to award Respondent a credit for payments made, if any, of TTD benefits related to the left shoulder injury during this period.

Regarding Issue (M), the Commission reverses the Arbitrator’s decision awarding penalties under §19(l), §19(k), and §16 of the Act.

Regarding penalties under §19(l), the Arbitrator assessed penalties against Respondent in connection with nonpayment and/or delayed payment of TTD benefits. The Arbitrator awarded temporary total disability benefits of \$507.21/week for 18-3/7 weeks, commencing October 14, 2022 through February 20, 2023, as provided in Section 8(b) of the Act. As mentioned above, the commencement date coincided with the surgery performed by Dr. Tu for the left shoulder and the end-date coincided with the date Petitioner returned to work with light duty restrictions. The Arbitrator did not, however, assess any penalties under §19(l) pertaining to this period of temporary disability. Instead, the Arbitrator assessed §19(l) penalties of \$30.00 per day during a period of 50 days from December 26, 2024 through the date of trial. The Commission initially notes that Petitioner was again temporarily disabled starting May 14, 2024, through December 26, 2024; however, this second period of temporary disability was related to Petitioner’s *right* shoulder injury, which is the subject of Petitioner’s consolidated companion claim, case number 22 WC 028276. The Commission further notes that Petitioner was awarded TTD benefits for this time period in the companion case, as well as penalties under §19(l) in the companion case. The

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Commission finds Petitioner was not entitled to TTD after December 26, 2024, because Petitioner was discharged from care with permanent restrictions on that date, thus establishing Petitioner's condition of ill-being had stabilized and became permanent. "Once an injured employee's physical condition has stabilized, the employee is no longer eligible for TTD benefits because the disabling condition has become permanent." *Mechanical Devices vs. Industrial Comm'n*, 344 Ill. App. 3d 752, 759, 800 N.E.2d 819 (2003). Since Petitioner was not entitled to TTD benefits for his left shoulder condition after December 26, 2024, the Commission reverses and vacates the Arbitrator's award of penalties under §19(l). The Commission further finds that the question of whether Respondent without good and just cause failed, neglected, refused, or unreasonably delayed payment of TTD benefits during the period of October 14, 2022 through February 20, 2023, is not before us as Petitioner did not file a petition for review. We separately address the issues of TTD, maintenance, and penalties for the right shoulder claim in our Decision and Opinion on Review under case number 22 WC 028276.

Regarding penalties under §19(k), the Arbitrator repeated her finding that Respondent had no justification for failing to pay TTD benefits. The Arbitrator then awarded penalties under §19(k), but instead of calculating 50% of the unpaid TTD, the Arbitrator awarded §19(k) penalties based on 50% of the outstanding medical expenses. Pursuant to §19(k), the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award in situations where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy. 820 ILCS 305/19(k). An award of penalties under §19(k) is "intended to promote the prompt payment of compensation where due and to deter those occasional employers or insurance carriers who might withhold payment from other than legitimate motives." *Jacobo vs. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, P22. The imposition of penalties under §19(k) is discretionary. *Id.* at P23. In the instant case, the Commission finds Petitioner failed to prove that Respondent's failure to pay portions of the medical bills was unreasonable, vexatious or intentional. We therefore reverse and vacate the award of penalties under §19(k). As Petitioner did not file a petition for review, the question of penalties under §19(k) for non-payment or delayed payment of TTD benefits is not before us.

Regarding penalties under §16, the Commission may award attorney's fees where the employer or its insurance carrier has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of §19(k). Having found Petitioner is not entitled to penalties under §19(k) in this case, we reverse and vacate the award of attorney's fees.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$507.21 per week for a period of 18-3/7 weeks, commencing October 14, 2022, through February 20, 2023, that being the period of temporary total incapacity for work

22 WC 028275

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under §8(b), and that as provided in §8(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any. Respondent is entitled to a credit for paid TTD benefits, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner temporary partial disability benefits for 6 weeks, commencing April 21, 2023 through June 2, 2023, in the amount of \$809.41, as provided in Section 8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner reasonable and necessary medical services as provided in Section 8(a) and 8.2 of the Act: Concentra \$2,241.35, Vertex Anesthesia \$3,620.00, Midwest Specialty Pharmacy \$1,133.91, and Best Practice Physical Therapy \$1,787.20, as provided under §8(a) and §8.2 of the Act. Respondent is entitled to a credit for paid medical expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award for penalties under §19(l), §19(k), and §16 of the Act is hereby vacated.

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 \$19,100.00. 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.

February 17, 2026

KAD/swj
O121625

42

/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	22WC028275
Case Name	Daniel Gamboa v. Flexicorp, Inc.
Consolidated Cases	22WC028276
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	32
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Christopher Bassmaji
Respondent Attorney	Michael J. Danielewicz

DATE FILED: 4/8/2025

/s/ Jennifer Bae, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 8 2025 4.00%

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)

DANIEL GAMBOA

Employee/Petitioner

v.

FLEXICORP

Employer/Respondent

Case # **22** WC **028275**

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 **Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **February 13, 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, **December 11, 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 **\$39,562.64**; the average weekly wage was **\$760.82**.

On the date of accident, Petitioner was **50** 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 **\$0.00** under Section 8(j) of the Act.

ORDER**Medical Bills**

Respondent shall pay reasonable and necessary medical services as provided in Section 8(a) and 8.2 of the Act: Concentra \$2,241.35, Vertex Anesthesia \$3,620.00, Midwest Specialty Pharmacy \$1,133.91, and Best Practice Physical Therapy \$1,787.20, per the Fee Schedule.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$507.21/week for 18 3/7 weeks, commencing October 14, 2022 through February 20, 2023, as provided in Section 8(b) of the Act.

Temporary Partial Disability

Respondent shall pay Petitioner temporary partial disability benefit for 6 weeks, commencing April 21, 2023 through June 2, 2023, in the amount of \$809.41, as provided in Section 8(a) of the Act.

Penalties/Attorney's Fees

The Arbitrator awards \$1,500.00 under Section 19(l), \$4,391.43 under Section 19(k) and \$1,178.29 under Section 16. Respondent shall pay a total of \$7,069.72 in fees and penalties directly to Petitioner.

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.

Jennifer Bae

Signature of Arbitrator

APRIL 8 2025

[illegible]

ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL GAMBOA,
Petitioner,
v.
FLEXICORP,
Respondent.

MEMORANDUM OF DECISION OF ARBITRATOR – 19(b)

I. PROCEDURAL HISTROY

Mr. Daniel Gamboa (“Petitioner”), by and through his attorney, filed an Application of Adjustment of Claim for benefits under the Workers’ Compensation Act (“Act”). *820 ILCS 305/1 et seq. (West 2014)* Petitioner alleged that he sustained an accidental injury on December 11, 2021 while employed by Flexicorp (“Respondent”). A hearing was held on February 13, 2025 on the following issues: causation, medical treatment, temporary total disability, temporary partial disability benefits, and penalties and fees.

Petitioner testified in support of his claim. A report prepared by the Respondent's Section 12 examiner, Dr. Scott Sagerman, was submitted into evidence by Petitioner. (PX 10) The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1A)

II. FINDINGS OF FACT

Petitioner testified that he lives in Chicago. (T. 11-12) He had been living in the current residence for 3 years with his wife, whom he had been married for 35 years. (T. 12)

Petitioner testified that he is currently not employed but had been employed by Respondent in 2021. (T. 12) Petitioner explained that Respondent is a company that makes parts for cars. (T. 12) Petitioner testified that Respondent is located at Grand Avenue and Irving Park Road in Elk Grove Village. (T. 13) Petitioner testified that he started working for Respondent in May of 2010 as a machine operator. (T. 13) Petitioner testified that he never stopped working for Respondent and has not been fired. (T. 14) Petitioner explained that he was not allowed to return to work because of his restrictions. (T. 14) Petitioner testified that his last day that he worked was on May 14, 2024. (T. 14)

Job Duties

Petitioner testified that he was assigned to work with trims that required cleaning and painting the pieces and anything related to maintenance. (T. 13) Petitioner testified that in 2021, he was a machine operator and was cleaning the gutters, roofs, painting, “taking metal off the roof anything to do with maintenance except electricity.” (T. 13) Petitioner further explained that he did “all kinds of jobs” under maintenance. (T. 14) He worked anywhere from 8 to 10 hours a day. (T. 14)

Accident

Petitioner testified that on December 11, 2021, he was cleaning a machine with a co-worker. (T. 15) He explained that his co-worker was inside of the machine handing him large buckets filled with mud or ground metal when one of the buckets slipped, and as he was attempting to catch it so it would not land on his feet, he felt “a click” sound three times in his left arm, and he was unable to catch it. (T. 15) Petitioner explained that they stopped working for a while. (T. 16, 18) Because the accident occurred on Saturday and no supervisors were present, Petitioner testified that he reported the incident on Monday, December 13, 2021, when returned to work. (T. 16)

Petitioner’s Testimony – Regarding Medical Treatment

Following the accident, Petitioner testified that he sought medical treatment. (T. 18) Petitioner confirmed that he was treated at Concentra on December 15, 2021. (T. 18-19) He underwent x-rays and an MRI of his left shoulder. (T. 19) Petitioner testified that he continued to treat at Concentra and was referred to Dr. Kevin Tu for evaluation of his left shoulder. (T. 19) Petitioner testified that to his knowledge, Dr. Tu was an orthopedic surgeon. (T. 19-20)

Petitioner testified that he first met Dr. Tu on February 24, 2022. (T. 20) Petitioner testified that Dr. Tu recommended surgery and on October 14, 2022, he underwent left shoulder surgery. (T. 21) Petitioner testified that Dr. Tu also performed injections for both of his shoulders. (T. 21) Petitioner testified that his left shoulder surgery on October 14, 2022 was approved by workers’ compensation. (T. 22)

Petitioner testified that on March 7, 2023 (probably March 1, 2023, the report is dated march 7, 2023) at the request of Respondent, he underwent an independent medical exam. (T. 22) Petitioner testified that the insurance company’s doctor examined his right shoulder. (T. 22-23)

Petitioner testified that he last saw Dr. Tu on December 26, 2024. (T. 24) Petitioner testified that Dr. Tu discharged him and said that he was at maximum medical improvement (“MMI”). (T. 24) Petitioner testified that he was released with permanent restrictions – no lifting arms above his shoulder and no lifting over 25 pounds. (T. 25)

Petitioner testified he has not worked since May 14, 2024 because of his restrictions. (T. 25) Petitioner testified that he received workers’ compensation benefit for his left arm but not for his right shoulder. (T. 26) Petitioner testified that he had not received any workers’ compensation benefits since May 14, 2024. (T. 26) Petitioner explained that Dr. Tu placed him on off work for 3 months after the surgery and then placed him on restrictions. (T. 26) He further explained that

he was not allowed back to work because of his restrictions. (T. 26) Petitioner testified that he presented his restrictions to Susanna who is the manager for Respondent. (T. 26-27)

Petitioner testified that in 2023, he worked with restrictions earning less than his pre-injury wages. (T. 27) Petitioner testified that PX 12 are copies of his check stubs from April 9, 2023 to June of 2023 that showed he made less than \$760 per week. (T. 27-28)

Petitioner testified that after receiving his permanent restrictions on December 26, 2024, he presented to Susana who told him “that for the time being they did not have work.” (T. 28-29)

Petitioner testified that he had been looking for work on his own conducting job searches. (T. 29) Petitioner explained that his wife has cancer and is unable to work 5 days a week and that is why he is looking for work. (T. 29) Petitioner testified that he had been without income for the past 9 months. (T. 28-29)

Petitioner testified that PX 16 is a copy of a log with his job searches he had been conducting on his own. (T. 30) The log contains the locations where he applied for work within his restrictions. (T. 30) Petitioner testified that they informed him that they will call him when anything comes up in the future. (T. 30)

Petitioner testified that prior to December 11, 2021, he did not have pain, any injury, or seek medical treatment for his left arm. (T. 31)

On cross-examination, Petitioner testified that he felt something pop in his left shoulder. (T. 34) He explained that he was standing on a platform at his chest level when his co-worker was handing the buckets to him. (T. 34-35) They were on the same level except that his co-worker was inside of the machine and Petitioner was outside of the machine. (T. 35) Petitioner testified he felt “a lot of pain” on his left arm. (T. 35) Petitioner explained that he was grabbing the buckets with both of his hands when he felt pain in his left shoulder. (T. 36)

On cross-examination, Petitioner testified that he did finish his shift after the injury which was about 2 to 2 ½ hours more. (T. 37) Petitioner testified that there were no one other than his co-worker at the time of the accident and he was unable to report the accident. (T. 37)

On cross-examination, Petitioner testified that he did not seek medical attention on December 11, 2021. (T. 38) Petitioner testified that he did not go into work the next day, December 12, 2021 but did not remember why. (T. 38) Petitioner testified that he reported his accident the day he returned to work. (T. 39) Petitioner testified that Respondent referred him to Concentra for treatment. (T. 40)

On cross-examination, Petitioner testified that he did not feel pain in his left shoulder prior to December 11, 2021 injury. (T. 40) Petitioner testified that after the injury, he underwent a series of injection to his left shoulder with no relief. (T. 41) Petitioner explained that his tendon was ruptured and the doctor “put it back together.” (T. 41) Petitioner testified that he received some relief but that he still has pain when he lifts his shoulder. (T. 42)

On cross-examination, Petitioner testified that following his surgery to his left shoulder, he was placed on restrictions that Respondent accommodated. (T. 42) Petitioner testified that during his restrictions, other than the salary he was receiving, he did not receive any other benefits. (T. 42)

On cross-examination, Petitioner testified that Dr. Sagerman examined him but he was “not sure if it was just on the right.” (T. 47) Petitioner testified that Dr. Tu discharged him with restrictions and placed him on MMI. (T. 48) Petitioner testified that he did not have plans to seek further treatment but “right now I just want to go back to work.” (T. 48)

On cross-examination, Petitioner testified that he does not work and does not have any source of income since his right shoulder surgery in May of 2024. (T. 49)

On cross-examination, Petitioner testified that he remembered undergoing a functional capacity evaluation (“FCE”) on December 9, 2024 at Best Practice Physical Therapy. (T. 49-50) Petitioner explained that Dr. Tu implemented the permanent restrictions based on this FCE. (T. 50) Petitioner testified that he was not allowed to come back to work based on his restrictions. (T. 50-51)

Summary of Medical Records

On December 15, 2021, Denise Ortiz, HR Admin for Respondent sent Petitioner to be examined at Concentra in Schiller Park. (PX 1 p. 22) Petitioner reported to Concentra that on Saturday at 1:30 pm, he was working with a partner attempting to remove sand and metal pieces out of a machine when he felt a pull in the mid back and left upper arm. (PX 1 p. 32) He further reported that he felt a pop like sensation and a rolling sensation in the left upper arm. (PX 1 p. 32) Petitioner reported noticing a bruise on his left upper arm when getting a vaccine on December 14, 2021. (PX 1 p. 32) He reported having a sharp pain 10/10 when lifting his arm. (PX 1 p. 32) X-rays revealed “unremarkable thoracic spine” and it was recommended that Petitioner follow up with CT or MRI if symptoms persist or worsen. (PX 1 p. 14) After a physical examination, Petitioner was diagnosed with “strain of thoracic spine” and was prescribed with pain medication. (PX 1 p. 13, 37) Petitioner was placed on a modified work/activities. (PX 1 p. 38) Petitioner was told to follow up on Friday. (PX 1 p. 13, 38)

On December 17, 2021, Petitioner had a follow up at Concentra. (PX 1 pp. 40-51) Petitioner reported having left arm and lower back pain. (PX 1 p. 44) Petitioner reported having 3-4/10 pain level in his left middle back when sitting, 0/10 pain level when walking, 9-10/10 pain level for his left upper arm and shoulder with fast motion. (PX 1 p. 44) Petitioner reported that medication was helping him, especially at night. (PX 1 p. 44) After a physical examination, Petitioner was diagnosed with strain of thoracic spine and strain of upper left arm. (PX 1 p. 45) Petitioner was placed on a modified work/activities. (PX 1 p. 43) Petitioner was told to follow up on December 23, 2021. (PX 1 p. 43)

On December 23, 2021, Petitioner had a follow up at Concentra. (PX 1 pp. 52-63) For his left upper arm, Petitioner reported that he only has pain with supination and pronation but no pain at rest. (PX 1 p. 55) Petitioner is avoiding any rapid movement with his left arm. (PX 1 p. 55) After a physical examination, Petitioner was diagnosed with strain of thoracic spine and strain of upper

left arm. (PX 1 p. 56) Petitioner was placed on a modified work/activities. (PX 1 p. 57) Petitioner was told to follow up in 1 week. (PX 1 p. 57)

On December 30, 2021, Petitioner had a follow up at Concentra. (PX 1 pp. 64-75) Petitioner reported having intermittent symptoms that are described as dull and aching pain. (PX 1 p. 67) Petitioner was recommended to start physical therapy sessions along with home exercise program. (PX 1 p. 66) Petitioner was placed on a modified work/activities. (PX 1 p. 69)

On January 6, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 76-87) It was noted that physical therapy and an MRI was recommended but had not been approved. (PX 1 p. 79) Petitioner asked for more pain medications as his symptoms were unchanged from previous visit. (PX 1 p. 79) After a physical examination, Petitioner was diagnosed with strain of thoracic spine and strain of upper left arm. (PX 1 p. 80) Petitioner was prescribed with Cyclobenzaprine, Muscle Rub, and Naproxen. (PX 1 p. 80) Petitioner was placed on a modified work/activities. (PX 1 pp. 81-82) Petitioner was told to follow up in 1 week. (PX 1 p. 76)

On January 13, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 88-99) Petitioner reported that his symptoms were worse and any arm elevation was painful. (PX 1 p. 91) The MRI and physical therapy had not been approved. (PX 1 p. 91) Petitioner rated his pain level at 8/10. (PX 1 p. 91) Petitioner was told to continue with home exercise program while he waits an approval for physical therapy and was placed on decrease work restrictions. (PX 1 p. 92) Petitioner was told to follow up in 1 week. (PX 1 p. 96)

On January 20, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 100-113) Petitioner reported that his pain was intermittent and dull in nature. (PX 1 p. 106) He reported that the severity of the pain is mild but he had stiffness in his back and decreased flexion. (PX 1 p. 106) Petitioner reported working transitional duty. (PX 1 p. 106) It was noted that Petitioner was at approximately 50% of the way toward meeting the physical requirements of his job. (PX 1 p. 107) Petitioner was placed on the same work restrictions as his previous visit and was told to return in 1 week. (PX 1 p. 100)

On January 27, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 116-127) Petitioner reported having the same symptoms as the previous visit and was told the MRI and physical therapy had not been approved. (PX 1 p. 121) He reported that the severity of the pain is moderate with dull and aching in nature. (PX 1 p. 121) It was noted that Petitioner's healing is in the beginning stages. (PX 1 p. 122) Petitioner was placed on the same work restrictions as his previous visit and was told to return in 1 week. (PX 1 pp. 124-125)

On February 3, 2022, Petitioner underwent an evaluation for physical therapy. (PX 1 pp. 128-137) It was recommended that Petitioner undergo physical therapy 3 times a week for 2 weeks. (PX 1 p. 129)

On February 3, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 138-149) Emails to and from Concentra to Gallagher Bassett stated that Petitioner was referred for a total of 12 physical therapy sessions that was approved. (PX 1 p. 140) Petitioner reported the same symptoms as the previous visit. (PX 1 p. 142) It was noted that Petitioner was at approximately 25% of the way

toward meeting the physical requirements of his job. (PX 1 p. 145) Petitioner was placed on the same work restrictions as his previous visit and was told to return in 1 week. (PX 1 p. 138)

On February 7, 2022 and February 8, 2022, Petitioner underwent physical therapy sessions. (PX 1 pp. 150-163)

On February 10, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 164-175) It was noted that Petitioner had attended 4 physical therapy sessions and demonstrated functional improvement. (PX 1 p. 168) It was further noted that Petitioner has significant difficulties with the physical requirements of his job. (PX 1 p. 169) An MRI was ordered. (PX 1 p. 169) After a physical examination, Petitioner was diagnosed with strain of left upper arm. (PX 1 p. 169) He was placed on modified work restrictions. (PX 1 p. 164)

On February 10, 2022 and February 15, 2022, Petitioner underwent physical therapy sessions. (PX 1 pp. 176-188)

On February 16, 2022, Petitioner underwent an MRI of his left shoulder at Hawthorne Imaging. (PX 1 pp. 203-204; PX 9 pp. 1-2) It revealed “intermediate to high-grade interstitial versus partial-thickness articular surface tear of the anterior fibers of the greater tuberosity without retraction; mild subscapularis and biceps tendinosis; nonspecific heterogeneity of the superior labrum and anterior to anterior inferior labrum, mild sprain of the inferior joint capsule, mild subacromial subdeltoid bursitis, and mild osteoarthritic changes of the acromioclavicular joint. (PX 1 p. 204; PX 9)

On February 18, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 189-202) Petitioner reported the same symptoms as previous visit. (PX 1 p. 195) It was noted that Petitioner attended 2 additional physical sessions since the last visit. (PX 1 p. 195) After a physical examination, Petitioner was diagnosed with strain of upper arm – left and strain of thoracic spine. (PX 1 p. 196) Petitioner’s prescription for pain medications were renewed. (PX 1 p. 196) He was placed on modified work restrictions. (PX 1 p. 189)

On February 18, 2022, Petitioner underwent a physical therapy session. (PX 1 pp. 208-212) On February 22, 2022, Petitioner underwent a physical therapy session. (PX 1 pp. 213-219) It was noted that Petitioner was tolerating the treatment and was scheduled to see a specialist. (PX 1 p. 213)

On February 24, 2022, Petitioner met with Dr. Tu for an orthopedic consultation from a referral from Laura Lenik for his left arm pain. (PX 1 pp. 220-225) After review of the previous MRI that showed high grade partial tearing of the rotator cuff, physical examination, and learning from Petitioner that his symptoms are localized to the distal humerus, Dr. Tu recommended obtaining an MRI of the humerus. (PX 1 p. 224) Petitioner was placed on no lifting over 10 pounds and told to return for a follow up after an MRI is completed. (PX 1 p. 220)

On March 2, 2022, an MRI of the left upper arm was completed at Athlete Imaging. (PX 8) Impression was unremarkable for left upper arm. (PX 8)

On March 10, 2022, Petitioner returned to see Dr. Tu after having an MRI of his humerus. (PX 1 pp. 226-230) Dr. Tu noted that the MRI of the humerus is negative for any significant abnormalities but that Petitioner does have a high-grade partial-thickness rotator cuff tear. (PX 1 p. 229) After discussing the treatment plan, Petitioner wanted to proceed with an injection. (PX 1 p. 229) Dr. Tu performed an injection into the left shoulder subacromial space. (PX 1 p. 229) Petitioner was placed on no lifting over 20 pounds and was told to return in 2 weeks for evaluation of his progress. (PX 1 p. 229)

On March 30, 2022, Petitioner returned to see Dr. Tu for a follow up. (PX 1 pp. 231-235) Petitioner reported having some improvement but still having difficulty with pain localized to the anterior lateral aspect of the shoulder and reaching behind as well as overhead activities. (PX 1 p. 234) It was further reported that Petitioner did not have much improvement after physical therapy sessions. (PX 1 p. 234) Petitioner was placed on no lifting over 30 pounds and was told to return in 1 month for evaluation of his progress. (PX 1 p. 234)

On April 28, 2022, Petitioner returned to see Dr. Tu for a follow up. (PX 1 pp. 236-240) Petitioner reported having some improvement after the injection but still had difficulty with overhead and reaching activities including reaching behind his back. (PX 1 p. 239) Petitioner informed Dr. Tu that he would like to proceed with another cortisone injection and that the physical therapy did not give him much improvement with his symptoms. (PX 1 p. 239) Petitioner was placed on no lifting over 30 pounds and was told to return in 6 weeks for evaluation of his progress. (PX 1 p. 239)

On May 27, 2022, Respondent sent Petitioner to Concentra after injuring his right arm and shoulder on May 20, 2022. (PX 1 pp. 244-271) X-rays of Petitioner's right shoulder was taken that showed no acute fractures. (PX 1 p. 245) After a physical examination, Petitioner was diagnosed with right shoulder strain and sub-coracoid impingement of right shoulder. (PX 1 p. 264) Physical therapy was ordered and Petitioner was placed on 10-pound restrictions. (PX 1 pp. 264-265)

On June 6, 2022, Petitioner underwent a physical therapy assessment. (PX 1 pp. 272-282)

On June 8, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 283-297) Petitioner reported having pain with right shoulder abduction and external rotation and pain radiating to his right arm. (PX 1 p. 289) It was noted that Petitioner has significant difficulties with the physical requirements of his job. (PX 1 p. 290) He was placed on 10-pound restrictions and told to return in 7 days for a follow up. (PX 1 p. 291)

On June 8, 2022, Petitioner underwent a physical therapy session. (PX 1 pp. 298-300) It was noted that the overall progress was slower than expected. (PX 1 p. 300)

On June 9, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 301-311) Petitioner complained of having difficulty with overhead and reaching activities. (PX 1 p. 304) After a physical examination and speaking to Petitioner, Dr. Tu recommended left shoulder arthroscopic subacromial decompression with possible rotator cuff repair. (PX 1 p. 304) Petitioner was placed on no lifting over 30 pounds. (PX 1 p. 304)

On June 17, 2022, Petitioner had an MRI of his right shoulder completed at Hawthorn Works Medical Imaging. (PX 1 pp. 316-317; PX 9 pp. 3-4) It showed mild supraspinatus and biceps tendinosis; nonspecific heterogeneity of the superior labrum; mild degenerative changes of the acromioclavicular joint, possible adhesive capsulitis, 0.6 X 1.7 X 2 cm fusiform collection in the subcutaneous soft tissues overlying the acromion. (PX 1 p. 317; PX 9 pp. 3-4)

On June 22, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 312-327) Petitioner continued to have pain with right shoulder abduction and external rotation. (PX 1 p. 321) An MRI of June 17, 2022 was reviewed and Petitioner was referred to follow up with an orthopedic specialist for “evaluate and treat.” (PX 1 p. 322) Petitioner was placed on light duty and told to return to Concentra as needed. (PX 1 p. 322)

On July 7, 2022, Petitioner met with Dr. Tu for a follow up and a referral for his right shoulder. (PX 1 pp. 328-340) Dr. Tu noted that Petitioner had an injury to his right shoulder now but he was working to get an authorization for left shoulder surgery. (PX 1 p. 331) Dr. Tu noted that the surgery for the left shoulder was authorized previously but rescinded. (PX 1 p. 331) Dr. Tu reviewed the MRI of the right shoulder dated June 17, 2022 and noted that it was negative for a full-thickness rotator cuff tear with some degenerative changes over the AC joint. (PX 1 p. 337) Dr. Tu diagnosed Petitioner with right shoulder strain with secondary adhesive capsulitis. (PX 1 p. 338) Dr. Tu recommended a conservative treatment for the right shoulder and performed an injection to the right shoulder. (PX 1 p. 338) Dr. Tu also recommended that Petitioner continue with physical therapy for aggressive range of motion and strengthening. (PX 1 p. 338) Petitioner was placed on no lifting over 30 pounds and told to return in 1 month for a further evaluation. (PX 1 p. 338)

Petitioner underwent physical therapy sessions for his right shoulder on July 15th, July 19th, July 20th, July 22nd, July 25th, July 27th, July 29th, August 2nd, and August 3rd of 2022. (PX 1 pp. 341-395)

On August 4, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 396-412) It was noted that Petitioner was diagnosed with rotator cuff tear for his left shoulder and surgery was recommended. (PX 1 pp. 396-399) A surgery had not been approved. (PX 1 p. 399) It was noted that Petitioner was diagnosed with adhesive capsulitis of his right shoulder. (PX 1p. 402) Dr. Tu recommended Petitioner to continue with the course of physical therapy. (PX 1 p. 404) Petitioner was told to return for further evaluation for his right shoulder in 5 weeks. (PX 1 p. 404)

Petitioner underwent physical therapy session for his right shoulder on August 9th, August 11th, August 15th, August 17th, August 19th, August 22nd, August 24th, August 30th, September 1st of 2022. (PX 1 pp. 405-481)

On September 8, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 482-491) Dr. Tu noted that Petitioner’s range of motion had improved for his right shoulder but still experiencing pain. (PX 1 p. 485) Petitioner was told to continue with home exercise program and placed on 30-pound restrictions. (PX 1 p. 485) As far as the left shoulder, it was noted that Petitioner was scheduled to see an independent medical examiner and surgery had not been approved. (PX 1 p. 490)

On September 8, 2022, Petitioner underwent a physical therapy session for his right shoulder injury. (PX 1 pp. 492-498)

On October 6, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 499-508) Dr. Tu noted that Petitioner's surgery for his left shoulder had been approved and was scheduled for October 14, 2022 and that he was going to hold off on a cortisone injection for the right shoulder until recovery. (PX 1 p. 502, 507) Petitioner was told to continue with home exercise program and no lifting over 30 pounds. (PX 1 p. 502)

On October 14, 2022, Dr. Tu performed left shoulder arthroscopic rotator cuff repair, left shoulder arthroscopic subacromial decompression, and left shoulder arthroscopic extensive debridement at G & T Orthopaedics and Sports Medicine. (PX 2; PX 3; PX 7)

On October 20, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 509-518) Dr. Tu noted that Petitioner wanted to proceed with an injection for his right shoulder but that he was going to hold off since Petitioner just had a surgery for his left shoulder. (PX 1 p. 512) Petitioner was told to continue with the home exercise program and no lifting greater than 30 pounds. (PX 1 p. 512) Dr. Tu recommended physical therapy – passive range of motion only. (PX 1 p. 517) Petitioner was placed on no work and was told to return in 1 month for evaluation of his progress. (PX 1 p. 517)

On October 24, 2022, an evaluation for physical therapy was performed for the left shoulder and Petitioner was recommended 3 times a week for 4 weeks. (PX 1 p. 519-523)

Petitioner underwent physical therapy sessions for his left shoulder on October 24th, 26th, 28th, 31st, November 2nd, 9th, 11th, 14th, 16th of 2022. (PX 1 pp. 524-566)

On November 17, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 567-577) Dr. Tu performed physical examination of Petitioner and discussed treatment plan for his right shoulder. (PX 1 p. 570) Dr. Tu noted that he would perform a cortisone injection on the next visit and informed Petitioner to continue with the home exercise program. (PX 1 p. 570) For the left shoulder, Dr. Tu recommended Petitioner to continue with physical therapy – passive range of motion only and return in 1 month for further evaluation. (PX 1 p. 575)

Petitioner underwent physical therapy sessions on November 18th, 23rd, 28th, 30th, December 2nd, 6th, 7th, 9th, 12th, and 14th of 2022. (PX 1 pp. 578-639)

On December 15, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 640-649) Dr. Tu noted that Petitioner still had significant dysfunction in his left shoulder and may need to continue aggressive physical therapy due to persistent limitations in range of motion. (PX 1 p. 646) Dr. Tu placed Petitioner on off work and stated that he may have to consider a postoperative MRI follow by a possible intra-articular cortisone injection. (PX 1 p. 646) For the right shoulder, Dr. Tu noted "I would like his shoulder to calm down a little bit more before we perform the injection." (PX 1 p. 648)

Petitioner underwent physical therapy sessions on December 16th, 19th, 21st, 22nd, 27th, 29th, 30th of 2022, January 3rd, 4th, 5th, 9th, and 11th of 2023. (PX 1 pp. 650-719)

On January 12, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 720-734) For the left shoulder, Dr. Tu recommended Petitioner to have a postoperative MRI to ensure that the rotator cuff has healed. (PX 1 p. 723) After performing an injection into the right shoulder glenohumeral joint, Dr. Tu recommended aggressive therapy for range of motion. (PX 1 p. 728)

Petitioner underwent physical therapy sessions on January 16th, 18th, 20th, 23rd, 25th, 27th, 30th, and February 1 of 2023. (PX 1 pp. 735-782)

On February 2, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 783-792) It was noted that Petitioner continued to have significant limitations in his range of motion despite aggressive therapy postoperative for his left shoulder. (PX 1 p. 786) Dr. Tu performed an injection into the left shoulder glenohumeral joint and recommended continue with aggressive therapy for range of motion and strengthening. (PX 1 p. 786) Dr. Tu noted that Petitioner's function was improving for his right shoulder and recommended him to continue aggressive therapy for range of motion activities. (PX 1 p. 791) Petitioner was told to return in 1 months for further evaluation. (PX 1 p. 791)

Petitioner underwent physical therapy sessions on February 7th, 9th, 10th, 13th, 15th, 17th, 20th, and 22nd of 2023. (PX 1 pp. 793-840)

On February 22, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 841-858) For the left shoulder, Dr. Tu noted that Petitioner still has dysfunction to his left shoulder including decreased range of motion as well as pain. (PX 1 p. 855) He is attempting to get authorization for left shoulder manipulation under anesthesia arthroscopic lysis of adhesion and capsulotomy. (PX 1 p. 855) Petitioner was recommended to have aggressive therapy 4 to 5 times a week to help maintain his range of motion. (PX 1 p. 855) Petitioner was placed on 5-pound restrictions for his left shoulder. (PX 1 p. 855) It was noted that a surgery for right shoulder was approved. (PX 1 p. 857) Petitioner was placed on 30-pound restrictions for his right shoulder. (PX 1 p. 857)

Petitioner underwent physical therapy sessions on February 24th, 27th, and March 1st of 2023. (PX 1 pp. 859-874)

On March 1, 2023, at the request of Respondent, Petitioner met with Dr. Scott Sagerman of Hand to Shoulder Associates, S.C. for an independent medical evaluation. (PX 10)

On March 2, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 875-886) For his left shoulder, it was noted that Petitioner was gradually improving as far as his range of motion with therapy. (PX 1 p. 880) Petitioner was placed on 5-pound restrictions for his left shoulder. (PX 1 p. 880) For his right shoulder, Petitioner was recommended to continue therapy with aggressive for range of motion as well as strengthening. (PX 1 p. 885) Petitioner was placed on no lifting greater than 30 pounds. (PX 1 p. 885)

Petitioner underwent physical therapy sessions on March 3rd, 6th, 8th, 10th, 15th, 17th, 20th, 24th, 27th, 29th, 30th, April 3rd and 5th of 2023. (PX 1 pp. 887-957)

On April 6, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 958-969) Petitioner reported worsening symptoms including increased pain and decreased range of motion for his left shoulder. (PX 1 p. 966) Petitioner wanted to proceed with left shoulder manipulation under anesthesia arthroscopic lysis of adhesion and capsulotomy. (PX 1 p. 966) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 966) Dr. Tu noted that Petitioner needs a surgery for his left shoulder and any treatment for right shoulder is on hold. (PX 1 p. 968) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 968)

On May 18, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 970-979) Petitioner continues to have limited range of motion with pain for his left shoulder. (PX 1 p. 973) It was noted that an IME was completed but Dr. Tu did not have a copy of the report. (PX 1 p. 973) The IME doctor recommended an EMG. (PX 1 p. 973) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 973) Dr. Tu recommended that any treatment for the right shoulder on hold until treatment for left shoulder is completed. (PX 1 p. 978) No lifting over 30 pounds for the right shoulder. (PX 1 p. 978)

On June 6, 2023, an EMG study was completed. (PX 1 pp. 980-1002) The study showed all normal limits. (PX 1 pp. 984-985)

On June 15, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1003-1012) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder is completed. (PX 1 p. 1006) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1006) Dr. Tu noted that the EMG study did not demonstrate any significant pathology and that Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1011) Dr. Tu was waiting for approval of the surgery. (PX 1 p. 1011) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1011)

On July 23, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1013-1022) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder is completed. (PX 1 p. 1016) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1016) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1021) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1021) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1021)

On August 24, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1023-1036) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder has completed. (PX 1 p. 1028) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1028) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1035) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1035) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1035)

On September 28, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1037-1055) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1040) Dr. Tu was waiting for

approval for the surgery. (PX 1 p. 1040) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1040) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder is completed. (PX 1 p. 1054) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1054)

On October 26, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1056-1074) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1068) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1068) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1068) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder is completed. (PX 1 p. 1073) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1073)

On November 30, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1075-1092) Dr. Tu concluded that Petitioner required surgical intervention to his right shoulder but Petitioner wanted to hold off until his treatment for his left shoulder completed. (PX 1 p. 1082) Dr. Tu was waiting for approval for the surgery on the left shoulder. (PX 1 p. 1091)

On January 11, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1093-1116) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1068) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1098) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1098) It was noted that surgery for the right shoulder was approved but Petitioner wanted to wait his treatment for his left shoulder completed. (PX 1 p. 1115) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1115)

On February 22, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1117-1134) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1131) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1131) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1131) It was noted that surgery for the right shoulder was approved but Petitioner wanted to wait his treatment for his left shoulder completed. (PX 1 p. 1133) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1133)

On April 11, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1135-1152) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1131) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1146) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1146) The surgery for the right shoulder was approved previously and Dr. Tu scheduled it for May 14, 2024. (PX 1 p. 1151)

On May 7, 2024, Petitioner met with Dr. Ronnie Mandal of Illinois Orthopedic Network, LLC on a referral from Dr. Tu. (PX 4 pp. 6-7) Petitioner had a preoperative clearance for his right shoulder. (PX 4 pp. 6-7)

On May 14, 2024, Petitioner met with Dr. Tu at Illinois Orthopedic Network, LLC. (PX 4 pp. 8-9) Dr. Tu performed right shoulder manipulation under anesthesia, right shoulder lysis of adhesions and extensive debridement, right shoulder arthroscopic capsulotomy, and right shoulder arthroscopic subacromial decompression with lysis of adhesions in the subacromial space. (PX 4 p. 8)

Petitioner underwent physical therapy sessions for his right shoulder on May 15th, 16th, 17th, 20th, and 21st of 2024. (PX 1 pp. 1153-1183)

On May 23, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1184-1202) Exam of the right shoulder revealed a clean, dry, and intact incisions. (PX 1 p. 1192) Petitioner was recommended to continue with aggressive physical therapy to the right shoulder 4 times a week for 4 weeks. (PX 1 p. 1192) Dr. Tu noted that Petitioner would like to proceed with surgery for his left shoulder that has not been approved yet. (PX 1 p. 1201) Petitioner was placed on no lifting over 5 pounds. (PX 1 p. 1201)

Petitioner underwent physical therapy sessions for his right shoulder on May 23rd, 28th, 29th, 30th, 31st, June 3rd, 4th, 6th, 7th, 10th, 12th, 13th, 14th, 17th, and 18th of 2024. (PX 1 pp. 1203-1306)

On June 20, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1307-1325) Dr. Tu noted that Petitioner would like to proceed with surgery for his left shoulder that has not been approved yet. (PX 1 p. 1314) Petitioner was placed on no lifting over 5 pounds. (PX 1 p. 1314) For the right shoulder, Dr. Tu noted that Petitioner's function has improved and will need to continue with physical therapy. (PX 1 p. 1324)

On June 20, 2024, Petitioner had a re-assessment for physical therapy. (PX 1 pp. 1326-1328)

Petitioner underwent physical therapy sessions for his right shoulder on June 20th, 21st, 24th, 26th, 28th, July 2nd, 3rd, 5th, 8th, 10th, 12th, 15th, and 17th of 2024. (PX 1 pp. 1329-1409)

On July 18, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1410-1429) Petitioner was recommended to continue with physical therapy for strengthening and placed on no use of right arm restriction. (PX 1 p. 1422) Dr. Tu noted that the surgery for the left shoulder still had not been approved and placed Petitioner on no lifting over 5 pounds. (PX 1 p. 1428)

Petitioner underwent physical therapy sessions for his right shoulder on July 18th, 22nd, 24th, 26th, 29th, August 1st, 2nd, 5th, 7th, 8th, 12th, 14th, 16th, 19th, and 21st of 2024. (PX 1 pp. 1430-1520)

On August 22, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1521-1539) For the right shoulder, it was noted that Petitioner will continue with physical therapy for strengthening and placed on no lifting over 5 pounds. (PX 1 p. 1536) Dr. Tu noted that the surgery for the left shoulder still had not been approved and placed Petitioner on no lifting over 5 pounds. (PX 1 p. 1538)

Petitioner was re-assessed for physical therapy and underwent sessions on August 22nd, 26th, 28th, 30th, September 3rd, 5th, 6th, 9th, 11th, 13th, and 17th of 2024. (PX 1 pp. 1540-1604)

On September 19, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1605-1629) For the right shoulder, it was recommended that Petitioner continue with physical therapy for strengthening. (PX 1 p. 1621) Petitioner was placed on no lifting over 30 pounds for his right shoulder and told to return in 1 month for evaluation of his progress. (PX 1 p. 1621) Dr. Tu noted

that the physical therapy ordered for the right shoulder will help with the left shoulder. (PX 1 p. 1628) Petitioner was placed on no lifting over 10 pounds for his left shoulder. (PX 1 p. 1628)

Petitioner was re-assessed for physical therapy and underwent sessions on September 19th, 25th, 26th, 27th, 30th, October 2nd, 4th, 7th, 9th, 11th, and 14th of 2024. (PX 1 pp. 1630-1697)

On October 17, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1698-1722) It was noted that Petitioner was starting on a work conditioning program for his right shoulder which would be for his whole body and that his left shoulder would be involved. (PX 1 p. 1707, 1719) Petitioner was placed on no lifting greater than 30 pounds for his left and right shoulder and work 10-hours a day. (PX 1 p. 1707, 1719)

Petitioner underwent work conditioning sessions on October 17th, 22nd, 23rd, 24th, and 25th of 2024. (PX 1 pp. 1723-1758)

On November 21, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1794-1801) It was noted that Petitioner was being sent for an FCE. (PX 1 p. 1795) Petitioner was placed on no lifting over 10 pounds for his left shoulder and work 10 hours a day. (PX 1 p. 1795) For the right shoulder, Petitioner stated that he did not feel that he could return to normal work because of the overhead activity requirement. (PX 1 p. 1800)

On December 12, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1804-1822) For both shoulders, it was noted that Dr. Tu was waiting for the result of the FCE to determine if Petitioner needed permanent restrictions and placed Petitioner on 10-pound restrictions with 10 hours per day work. (PX 1 p. 1804, 1806)

On December 26, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1823-1840) For both shoulders, it was noted that Petitioner required permanent restrictions per the FCE of December 9, 2024 – no lifting greater than 25 pounds on a frequent basis and overhead activities as tolerated. (PX 1 pp. 1823-1824, 1837-1838)

Respondent's Section 12 Examiner – Dr. Scott Sagerman

On March 1, 2023, at the request of Respondent, Petitioner met with Dr. Sagerman of Hand to Shoulder Associates, S.C. for an independent medical evaluation. (PX 10) PX 10 is a report prepared by Dr. Sagerman, dated March 7, 2023.

After reviewing the history documented in the medical records and exam, Dr. Sagerman opined that Petitioner sustained a right shoulder strain with possible labral tear due to the work accident on May 20, 2022. (PX 10 p. 4) Dr. Sagerman further opined that Petitioner had not reached MMI and that he may elect to proceed with right shoulder surgery as recommended by his treating physician. (PX 10 p. 6) With regard to the left shoulder injury that occurred on December 11, 2021, Dr. Sagerman stated that he did not receive any medical records and that any injury sustained to the left shoulder was not caused by the accident that occurred on May 20, 2022. (PX 10 p. 7) With regard to the left hand, Dr. Sagerman recommended Petitioner to undergo EMG. (PX 10 p. 8) He concluded that all treatment Petitioner received thus far are reasonable. (PX 10)

Petitioner's Current Condition

Petitioner testified that currently, he is unable to lift his right arm above the elbow, below the shoulder. (T. 32) He testified that he is unable to lift both arms and is in pain. (T. 33) Petitioner explained that when he is not moving, "there's no problem" as far as pain. (T. 33)

On cross-examination, Petitioner testified that he did not feel pain while he was testifying. (T. 47)

On re-direct examination, Petitioner testified that if his conditions worsen, he will go back to see Dr. Tu. (T. 53)

Correspondence to/from Petitioner's Attorney to Respondent's Attorney

May 24, 2024 – email from Petitioner's attorney's office to Respondent's attorney: seek TTD payment, attached Dr. Tu's work status report – Petitioner is to remain off work. (PX 13 p. 1)

May 30, 2024 – email from Petitioner's attorney's office to Respondent's attorney: attached a link to access Petitioner's medical records from Concentra and seeking TTD. (PX 13 p. 2)

June 3, 2024 – email from Respondent's attorney to Petitioner's attorney: asking for the period for the TTD and rate. (PX 13 p. 2)

June 5, 2024 – email from Petitioner's attorney's office to Respondent's attorney: seeking TTD for 11/25/22 to 12/22/22 and 5/14/22 and TPD for 4/21/23, 4/28/23, 5/5/23, 5/12/23, 5/19/23, 5/26/23, 6/2/23 with paystubs attached. (PX 13 p. 3)

June 17, 2024 – email from Petitioner's attorney's office to Respondent's attorney: seeking status of TTD and TPD payments. (PX 13 p. 4)

July 15, 2024 – email from Petitioner's attorney's office to Respondent's attorney: "Following up on this. The case [is] up on our motion on 7/18/24." (PX 13 p. 4)

July 15, 2024 – email from Respondent's attorney to Petitioner's attorney: "Do you have work statuses for the dates claimed?" (PX 13 p. 5)

July 15, 2024 – email from Petitioner's attorney to Respondent's attorney: stating that he had sent emails with work status report previously and medical records on a couple of occasions, attached a link to medical records. (PX 13 p. 5)

July 15, 2024 – email from Petitioner's attorney to Respondent's attorney: Petitioner underwent surgery on May 14, 2024, which was authorized by Respondent, TTD is owed from 11/25/22 to 12/22/22 and 5/14/22 to present. Petitioner is also owed TPD for 4/21/23, 4/28/23, 5/5/23, 5/12/23, 5/19/23, 5/16/23, 6/2/23. "I will be asking the Arbitrator for a trial date and will be seeking fees and penalties as this is clearly vexatious conduct on Respondent's part." (PX 13 p. 6)

July 15, 2024 – email from Respondent’s attorney to Petitioner’s attorney: he will review the dates for the TTD and calculates TPD claim to be total \$805.58. (PX 13 p. 7)

July 22, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: attached Dr. Tu’s work status report dated 7/18/24 placing Petitioner on restrictions. Petitioner spoke to Susana and stated to Petitioner that she is waiting to hear from Respondent. Demand for TTD is made. (PX 13 p. 7)

July 23, 2024 – email from Respondent’s attorney to Petitioner’s attorney: seeking 30-day status date and stated that he recommended to his client to issue TTD. (PX 13 p. 8)

July 24, 2024 – email from Respondent’s attorney to Petitioner’s attorney: following up on his last email. (PX 13 p. 8)

July 24, 2024 – email from Petitioner’s attorney to Respondent’s attorney: will ask to push the time to a later slot but cannot agreed to RTC without confirmation that TTD will be paid. (PX 13 p. 8)

July 24, 2024 – email from Respondent’s attorney to Petitioner’s attorney: he will recommend that his client pay TTD and asked the Arbitrator to make the same which will “make them act quicker.” (PX 13 p. 9)

July 25, 2024 – email from Petitioner’s attorney to Respondent’s attorney: he appeared at 9 am for pretrial and asked to be moved to 2 pm to accommodate Respondent’s attorney. (PX 13 p. 9)

July 25, 2024 – email from Respondent’s attorney to Petitioner’s attorney: “Thanks Christopher. See you then.” (PX 13 p. 9)

August 5, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: seeking updates on payment of TTD and TPD. (PX 13 p. 10)

August 5, 2024 – email from Respondent’s attorney to Petitioner’s attorney’s office: “I have made the recommendation. I will follow up with the client on it.” (PX 13 p. 10)

August 19, 2024 – email from Petitioner’s attorney to Respondent’s attorney: this matter is up before Arb. Bae tomorrow at 9 am for status on TTD and TPD underpayment. No checks have been received. (PX 13 p. 11)

August 20, 2024 – email from Respondent’s attorney to Petitioner’s attorney: he made recommendation to his client to pay TTD and need to secure a trial date. (PX 13 p. 11)

August 20, 2024 – emails to and from Petitioner’s attorney to Respondent’s attorney: informing the breakout session number. (PX 13 pp. 11-12)

September 9, 2024 – email from Respondent’s attorney to Petitioner’s attorney: asking for work status since the last note of 7/18/24, client is likely to pay TTD from 5/14/24 to avoid having a

hearing, he has recommended his client to continue to pay until accommodation made or off restrictions, will follow up when benefits are issued. (PX 13 p. 13)

September 9, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: attached Dr. Tu’s work status report dated August 22, 2024 and seeking TTD from 5/14/24 to present, TTD from 11/25/22 to 12/22/22, and TPD from 4/21/23 to 6/2/23. (PX 13 p. 13)

September 10, 2024 – email from Petitioner’s attorney to Respondent’s attorney: TTD lump sum payment must be mailed to the attorney’s office, TTD is owed from 5/14/24 to present and 11/25/22 to 12/22/22 and TPD for 4/21/23, 4/28/23, 5/5/23, 5/12/23, 5/19/23, 5/26/23, 6/2/23, there is no defense to not paying TTD or TPD. (PX 13 p. 14)

September 10, 2024 – email from Respondent’s attorney to Petitioner’s attorney: no need for hearing if TTD from the surgery date is mailed out and other TTD and TPD would be addressed in the final settlement. (PX 13 p. 15)

September 11, 2024 – email from Petitioner’s attorney to Respondent’s attorney: TTD check from the surgery date must be sent to the attorney’s office by Friday and weekly check for TTD should be sent to Petitioner to have the matter RTC, past TTD and TPD is a reminder. (PX 13 p. 15)

September 11, 2024 – email from Respondent’s attorney to Petitioner’s attorney: confirming and hoping the check was sent today or tomorrow. (PX 13 p. 16)

September 13, 2024 – email from Respondent’s attorney to Petitioner’s attorney: he has confirmation that 18 weeks of TTD from the surgery date to today has been sent and starting a weekly payment directly to Petitioner until Petitioner is back to work or off restrictions. (PX 13 p. 16)

September 13, 2024 – email from Petitioner’s attorney to Respondent’s attorney: please sent the check to the attorney’s office for the 18 weeks and weekly thereafter to the Petitioner. He will email Arbitrator to RTC the matter. (PX 13 p. 17)

September 13, 2024 – email from Petitioner’s attorney to Arb. Bae with cc Respondent’s attorney: asking for agreed RTC since Respondent’s attorney represented that TTD from the surgery date will be sent out as well as weekly check to Petitioner directly until he returns to work. (PX 13 p. 19)

September 18, 2024 – email from Petitioner’s attorney to Respondent’s attorney: asking for a confirmation that a check for 18 weeks of TTD was sent to his office and that the client will be issuing checks to Petitioner directly. (PX 13 p. 17)

September 19, 2024 – email from Respondent’s attorney to Petitioner’s attorney: confirmed check sent and weekly will be issued to Petitioner directly, seeking information about Petitioner’s status since it’s been 4 months after the surgery. (PX 13 p. 18)

September 26, 2024 – email from Petitioner’s attorney to Respondent’s attorney: checks still have not arrived, you told me and the Arb. Bae that checks were issued, will be motioning the claim to seek fees and penalties. (PX 13 p. 31)

September 26, 2024 – email from Respondent’s attorney to Petitioner’s attorney: will check to see why the check has not arrived. (PX 13 p. 30)

October 9, 2024 – email from Petitioner’s attorney to Respondent’s attorney: seeking status of TTD checks. (PX 13 p. 28)

October 21, 2024 – email from Petitioner’s attorney to Respondent’s attorney: no TTD and the case is up on October 23, 2024. (PX 13 p. 27)

October 21, 2024 – email from Respondent’s attorney to Petitioner’s attorney: agreed to secure a trial date and reaching out to his client to see why TTD has not been issued. (PX 13 p. 26)

October 23, 2024 – email from Respondent’s attorney to Petitioner’s attorney: confirming trial date of 11/18/24 and seeking work status (doctor’s note) since 8/22/24. (PX 13 p. 26)

November 6, 2024 – email from Respondent’s attorney to Petitioner’s attorney: pretrial date of 11/14/24 set and trial date of 11/18/24 and following up with his client regarding TTD. (PX 13 p. 25)

November 7, 2024 – email from Petitioner’s attorney to Respondent’s attorney: moving trial date from 18th to 19th. (PX 13 p. 24)

November 7, 2024 – email from Respondent’s attorney to Petitioner’s attorney: no objection to moving the trial date from 18th to 19th. (PX 13 p. 24)

November 7, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: a link to Petitioner’s medical records from Concentra. (PX 13 p. 23)

November 11, 2024 – email from Respondent’s attorney to Petitioner’s attorney: reaching out to his client regarding TTD and seeking information about the left shoulder surgery and when Petitioner would be at MMI. (PX 13 pp. 22-23)

November 11, 2024 – email from Petitioner’s attorney to Respondent’s attorney: confirming a conversation – Petitioner did not have the second left shoulder surgery but recommended for one, 30 pounds restricts for left and right shoulders, Petitioner represented restrictions to his employer and was told no work, IME doctor did not have medical records regarding left shoulder so there is no basis to deny the left shoulder surgery, Respondent authorized right shoulder surgery which Petitioner had 6 months ago without any TTD, will proceed with fees and penalties if no check received by 11/15/24. (PX 13 p. 22)

November 13, 2024 – email from Respondent’s attorney to Petitioner’s attorney: confirming trial set for Monday, hoping to get confirmation for the TTD check. (PX 13 p. 21)

November 14, 2024 – email from Petitioner’s attorney to Respondent’s attorney: no TTD check and seeking information. (PX 13 p. 21)

November 14, 2024 – email from Arb. Bae to the parties: whether this matter is proceeding to trial on 11/18/24. (PX 13 p. 35)

November 14, 2024 – email from Petitioner’s attorney to Arb. Bae with cc Respondent’s attorney: will proceed to trial unless TTD is received by tomorrow. (PX 13 p. 34)

November 15, 2024 – email from Petitioner’s attorney to Arb. Bae with cc Respondent’s attorney: seeking RTC since the Respondent’s attorney informed him that TTD was issued to his office paying through next week, asking for a trial date of 12/10/24 since prior representation had not been met. (PX 13 pp. 33-34)

November 15, 2024 – email from Respondent’s attorney to Arb. Bae and Petitioner’s attorney: agreeing to 12/10/24 trial date.

November 18, 2024 – email from Arb. Bae to the parties: confirming 12/10/24 trial date. (PX 13 p. 33)

December 6, 2024 – email from Petitioner’s attorney to Respondent’s attorney: no TTD check still, bring a colleague just in case you are called as a witness. (PX 13 p. 37)

December 8, 2024 – email from Petitioner’s attorney to Respondent’s attorney: asking for any word or explanation why he has not received TTD check. (PX 13 p. 37)

III. CONCLUSIONS OF LAW

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

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

It is the function of the Commission to judge the credibility of the witnesses and to resolve conflicts in the medical evidence and assign weight to witness testimony. *O’Dette v. Industrial Commission*, 79 Ill.2d 249, 253, 403 N.E.2d 221, 223 (1980); *Hosteny v. Workers’ Compensation Commission*, 397 Ill. App. 3d 665, 674 (2009). Internal inconsistencies in a claimant’s testimony,

as well as conflicts between the claimant's testimony and medical records, may be taken to indicate unreliability. *Gilbert v. Martin & Bayley/Hucks*, 08 ILWC 004187 (2010).

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

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

To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. Even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. Thus, a claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating his preexisting condition. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Com.*, 93 Ill. 2d 59, 63 442 N.E.2d 908 (1982).

Here, it is clear that Petitioner's current condition of ill-being for his left arm and shoulder is causally related to work-related injury that occurred on December 11, 2021.

Petitioner testified that prior to December 11, 2021, he did not have any pain, injury, or seek medical treatment for his left arm/shoulder. (T. 31) The Arbitrator notes that the medical records do not reflect that Petitioner had any treatment or injury to his left arm or shoulder prior to the accident that occurred on December 11, 2021.

As far as the accident, Petitioner testified that on December 11, 2021, he and his co-worker were cleaning a machine that contained mud or ground metal. (T. 15) He explained that his co-worker was inside the machine and he was outside as his co-worker was handing him buckets of mud/ground metal. (T. 15) As he was grabbing a bucket, it slipped and he was attempting to catch it when he heard clicking sound three times in his left arm. (T. 15) Petitioner explained that they stopped working for a while and then he finished his shift. (T. 16, 18) Petitioner testified that no supervisors were present since it was Saturday and he waited to report the accident when he returned to work. (T. 16)

Respondent sent Petitioner to Concentra on December 15, 2021 where he began treatment for the injury to his left arm/shoulder. (T. 18; PX 1 p. 22) Petitioner underwent x-rays and was diagnosed with "strain of thoracic spine. (PX 1 pp. 13-14, 37) He was placed on modified work restrictions and prescribed pain medications. (PX 1 pp. 13, 38) As Petitioner was being treated at Concentra, his symptoms began to get worse with dull, aching, and sharp pain with pain rated at 10/10. (PX 1 pp. 44, 67, 91) Physical therapy and an MRI was recommended but had not been approved. (PX

1 p. 91) Finally, on February 3, 2022, Petitioner underwent physical therapy assessment and was recommended for 12 sessions total. (PX 1 pp. 128-137, 140) Petitioner began his physical therapy sessions and on February 16, 2022, he underwent an MRI of his left shoulder. (PX 1 pp. 150-188, 203-204; PX 9 pp. 1-2) The MRI of the left shoulder revealed a high-grade partial-thickness rotator cuff tear. (PX 1 p. 204)

Concentra referred Petitioner to Dr. Tu and on February 24, 2022, he met Dr. Tu for a consultation. (PX 1 p. 220-225) Dr. Tu placed Petitioner on no lifting over 10 pounds and ordered additional MRI of the left upper arm (humerus) because of the pain Petitioner was experiencing at the time. (PX 1 p. 220) The impression from the MRI of the humerus was unremarkable. (PX 8)

On March 10, 2022, Petitioner received an injection into his left shoulder subacromial space and placed on no lifting over 20-pounds. (PX 1 pp. 226-230) Petitioner reported some improvement but was still having difficulty with overhead and reaching activities. (PX 1 p. 239) Petitioner further reported that physical therapy was not helpful to improve his symptoms. (PX 1 p. 239) He was placed on no lifting over 30 pounds. (PX 1 p. 239)

On May 20, 2022, while lifting a fan (approximate weight 25 pounds) at work, Petitioner injured his right arm and shoulder. (T. 16-17) Petitioner reported the accident/injury and was sent to Concentra. (T. 18)

On May 27, 2022, Concentra diagnosed Petitioner with right shoulder strain and sub-coracoid impingement of the right shoulder. (PX 1 p. 264) Concentra recommended physical therapy and placed him on 10-pound restrictions. (PX 1 pp. 244-271) Petitioner underwent an assessment and began physical therapy for his right arm/shoulder. (PX 1 pp. 298-300)

Petitioner continued to have difficulty with overhead and reaching activities for his left shoulder and on June 9, 2022, Dr. Tu recommends left shoulder arthroscopic subacromial decompression with possible rotator cuff repair. (PX 1 p. 304) As Petitioner continued with physical therapy for his right shoulder, he waited for an authorization for a surgery for his left shoulder. (PX 1 pp. 328-340, 341-395, 396-399, 405-481, 482-491, 492-498) Finally, on October 14, 2022, Dr. Tu performed left shoulder arthroscopic rotator cuff repair, left shoulder arthroscopic subacromial decompression, and left shoulder arthroscopic extensive debridement. (PX 2; PX 3; PX 7) After the surgery, Petitioner was recommended for physical therapy and began therapy on November 18, 2022. (PX 1 pp. 578-639)

On December 15, 2022, Dr. Tu noted that Petitioner continued to have significant dysfunction in his left shoulder and recommended aggressive physical therapy to address persistent range of motion limitation. (PX 1 pp. 640-649) On February 22, 2023, Dr. Tu again noted that Petitioner continued to have dysfunction in his left shoulder including decreased range of motion and pain and recommends left shoulder manipulation under anesthesia arthroscopic lysis of adhesion and capsulotomy. (PX 1 pp. 841-858) Petitioner continued with physical therapy as recommended by Dr. Tu for his left shoulder for limitation on range of motion and strength. (PX 1 pp. 859-874, 887-957) Dr. Tu continued to seek authorization for surgery to Petitioner's left shoulder but it was not approved. (PX 1 pp. 973, 1011, 1021, 1035, 1040, 1068, 1091, 1098, 1131)

On May 14, 2023, Dr. Tu performed right shoulder manipulation under anesthesia, right shoulder lysis of adhesions and extensive debridement, right shoulder arthroscopic capsulotomy, and right shoulder arthroscopic subacromial decompression with lysis of adhesion in the subacromial space. (PX 4 p. 8) After the surgery on the right shoulder, Petitioner underwent physical therapy including work conditioning from May 15, 2024 to October 25, 2024. (PX 1 pp. 1153-1183, 1203-1306, 1329-1409, 1430-1520, 1540-1604, 1630-1697, 1723-1758)

On December 9, 2024, Petitioner underwent an FCE and Dr. Tu released him on permanent restrictions for both shoulders – no lifting greater than 25 pounds on a frequent basis and overhead activities as tolerated. (PX 1 pp. 1823-1824, 1837-1838)

Respondent relies on their Section 12 examiner, Dr. Sagerman to state that Dr. Sagerman found Petitioner at MMI on June 15, 2023. (PX 10) June 15, 2023 is the date Petitioner met with Dr. Tu after completing an EMG study (recommended by Dr. Sagerman) for his left hand on June 6, 2023 which did not demonstrate any significant pathology. (PX 1 pp. 984-985, 1006, PX 10 p. 10)

The Arbitrator is not persuaded by Dr. Sagerman regarding the causation issue for Petitioner's left arm and shoulder. In fact, Respondent's reliance on Dr. Sagerman report is misguided.

First, the Arbitrator notes that Dr. Sagerman had no basis to recommend an EMG study other than x-rays that he took on the date of the exam on March 1, 2023 that showed "possible deformity of the distal radius with positive ulnar variance" on Petitioner's wrist without reviewing the accident and treatment that followed the accident of December 11, 2021. In fact, even Dr. Tu, Petitioner's treating surgeon was not recommending EMG study. (PX 10 p. 3) During this time, Dr. Tu was recommending and seeking authorization for left shoulder manipulation under anesthesia arthroscopic lysis of adhesion and capsulotomy because Petitioner continued to have dysfunction in his left shoulder including decreased range of motion and pain. (PX 1 pp. 973, 1011, 1021, 1035, 1040, 1068, 1091, 1098, 1131)

Second, Dr. Sagerman wrote in his report that he "did not receive any medical records to confirm the mechanism of injury of December 11, 2021" or accident report. (PX 10 p. 8) Therefore, he had no basis to give an opinion regarding the left arm/shoulder.

And finally, Dr. Sagerman did not have an opinion or had any basis to opine whether Petitioner's current condition of ill-being as to his left arm and shoulder is causally related to the injury that occurred on December 11, 2021. The only opinion he gave was that Petitioner did not sustain an injury to the left shoulder from the May 20, 2022 accident, which was the date Petitioner sustained an injury to the right shoulder. Petitioner is not contending that he sustained an injury to his left arm/shoulder from the accident of May 20, 2022.

Based on the above, the Arbitrator finds no inconsistent history laid by Petitioner. The Section 12 examiner's opinion did not persuade the Arbitrator for the reasons previously stated. The Arbitrator finds Dr. Tu to be more persuasive regarding the work injury, the cause of the injury, and the extent of the injury that occurred on December 11, 2021. Therefore, the Arbitrator concludes that Petitioner's current condition of ill-being to his left arm and shoulder is causally related to his work accident of December 11, 2021.

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

The Arbitrator adopts the above findings of fact and conclusions of law and incorporates them by reference as though fully set forth herein.

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

Respondent alleges that Petitioner was at MMI on June 15, 2023 and any treatment thereafter for his left arm and shoulder should be denied.

Petitioner credibly testified that he began treating at Concentra on December 15, 2021 and continued to treat through December 26, 2024 for very severe pain in his left arm and left shoulder that are corroborated by the medical records. The current outstanding bill for Concentra is \$2,241.35. (PX 1 pp. 4-13, 1759-1793)

On October 14, 2022, Petitioner underwent preoperative testing and surgical intervention at Orthotec Surgery Center. There are currently no outstanding charges for Orthotec Surgery Center. (PX 2 p. 2) Anesthesia for this procedure was provided by Vertex Anesthesia with an outstanding bill in the amount of \$3,620.00. (PX 3 pp. 2-11) Professional surgical charges were billed through G&T Orthopedics with no outstanding bill. (PX 7 pp. 2-3)

Petitioner was prescribed medication throughout the course of his treatment, which was provided by Midwest Specialty Pharmacy with an outstanding bill in the amount of \$1,133.91. (PX 5 pp. 2-3)

Petitioner was given durable medical equipment provided by Victory Enterprises II, Inc with no outstanding bill. (PX 6 p. 2)

On February 16, 2022, Petitioner underwent an MRI of the left shoulder at Hawthorne Imaging, no outstanding bill.

On December 9, 2024, Petitioner underwent an FCE at Best Practice Physical Therapy with an outstanding bill in the amount of \$1,787.60. (PX 15 p. 2)

The Arbitrator has already found and concluded that Petitioner's current condition of ill-being to his left arm and shoulder is causally related to his work accident of December 11, 2021 and that Petitioner's testimony was credible. The Arbitrator further finds that the treatment to date has been reasonable and necessary. All of Petitioner's treating physicians have consistently noted in their medical records that all treatment rendered was due to the work-related injury of December 11,

2021. Moreover, Respondent's Section 12 examiner, Dr. Sagerman opined that treatment had been reasonable and the need for surgery was indicated. And finally, Respondent's URs certified treatment and Respondent's adjuster authorized therapy as well as the surgery. (PX 11) Respondent has offered no evidence to refute the reasonableness and necessity of the medical treatment rendered.

As such, the Arbitrator orders Respondent to pay for the following outstanding medical services, pursuant to the medical fee schedule and Section 8(a) and 8.2 of the Act: Concentra \$2,241.35; Vertex Anesthesia \$3,620.00; Midwest Specialty Pharmacy \$1,133.91; and Best Practice Physical Therapy \$1,787.60.

Issue K, whether Petitioner is entitled to temporary total disability benefits, the Arbitrator finds as follows:

The Arbitrator adopts the above findings of fact and conclusions of law and incorporates them by reference as though fully set forth herein.

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

In determining whether a claimant remains entitled to receiving temporary total disability benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

On October 14, 2022, Dr. Tu performed a left shoulder arthroscopic rotator cuff repair, left shoulder arthroscopic subacromial decompression, and left shoulder arthroscopic extensive debridement. (PX 2; PX 3; PX 7) Following the surgery, Petitioner was placed on off-work as recommended by Dr. Tu. (PX 1 pp. 509-518) Dr. Tu restricted Petitioner from returning to work through February 2, 2023. (PX 1 pp. 567-577, 640-649, 720-734) On February 2, 2023, Dr. Tu revised Petitioner's restriction to no lifting with the left arm. Petitioner remained off-work through February 20, 2023. (PX 1 pp. 783-792)

On December 9, 2024, Petitioner underwent an FCE at Best Practice Physical Therapy. (PX 15) Petitioner's FCE was valid and reliable as he provided full and consistent effort throughout the FCE. Petitioner was cooperative and willing to attempt all activities requested of him to complete the FCE, and he did not present with self-limiting behavior. The FCE also noted Petitioner had been off work since his right shoulder surgery in May of 2024. The FCE revealed that Petitioner was capable of assuming a position in the medium strength category with a maximum occasional lift of 50 pounds, maximum frequent lift of 25 pounds, and maximum constant lift of 10 pounds. Petitioner was also capable of a maximum occasional carrying of 25 pounds, maximum frequent lift of 25 pounds, and maximum constant lift of 5 pounds.

On December 26, 2024, Dr. Tu reviewed the valid and reliable FCE with Petitioner. (PX 1 p. 1825) Dr. Tu released Petitioner with permanent restrictions pursuant to the FCE of no lifting greater than 25 pounds on a frequent basis and overhead activities as tolerated.

As the medical records and Petitioner's testimony reflect, he last worked for Respondent on May 14, 2024 and has not worked anywhere else. Petitioner has been consistently treating through the date of this trial. Further, Petitioner remains off-work through the date of the trial as he was released with permanent restrictions, which Respondent is unable to accommodate. Furthermore, Petitioner has conducted a self-directed job search and tendered job logs. (PX 16 pp. 1-2)

Therefore, the Arbitrator finds Petitioner is entitled to temporary total disability benefits from October 14, 2022 through February 20, 2023. The Arbitrator orders Respondent to pay temporary total disability benefits representing 18 and 3/7 weeks. The parties agree that the average weekly wage is \$760.82. (AE 1A)

Based on the above, the Arbitrator finds Respondent liable for 18 3/7 weeks of temporary total disability benefits (October 14, 2022 through February 20, 2023) at a weekly rate of \$ 507.21 which corresponds to \$ 9,347.16 to be paid directly to Petitioner.

Issue L, whether Petitioner is entitled to temporary partial disability benefits, the Arbitrator finds as follows:

The Arbitrator adopts the above findings of fact and conclusions of law and incorporates them by reference as though fully set forth herein.

“When the employee is working light duty on a part-time basis or full-time basis and earns less than he or she would be earning if employed in the full capacity of the job or jobs, then the employee shall be entitled to temporary partial disability benefits. Temporary partial disability benefits shall be equal to two-thirds of the difference between the average amount that the employee would be able to earn in the full performance of his or her duties in the occupation in which he or she was engaged at the time of accident and the gross amount which he or she is earning in the modified job provided to the employee by the employer or in any other job that the employee is working.” 820 ILCS 305/8. A temporary partial disability benefit is awarded when an employee (1) is able to work, but with a temporary decrease in wage-earning capacity or (2) is not capable of returning to substantially similar employment but is able to perform other work consistent with his or her disability. *Mechanical Devices v. Industrial Comm'n (Johnson)*, 344 Ill. App. 3d 752, 762, 800 N.E.2d 819, 828 (4th Dist. 2003).

On October 14, 2022, Dr. Tu performed a left shoulder arthroscopic rotator cuff repair, left shoulder arthroscopic subacromial decompression, and left shoulder arthroscopic extensive debridement. (PX 2; PX 3; PX 7) Following the surgery, Petitioner was placed on off-work as recommended by Dr. Tu. (PX 1 pp. 509-518) Dr. Tu restricted Petitioner from returning to work through February 2, 2023. (PX 1 pp. 567-577, 640-649, 720-734) On February 2, 2023, Dr. Tu revised Petitioner's restriction to no lifting with the left arm. Petitioner remained off-work through February 20, 2023. (PX 1 pp. 783-792)

On February 21, 2023, Petitioner returned to work within his work restrictions. (PX 12) From April 21, 2023 through June 2, 2023, Petitioner was working within his restrictions, but he was earning less than his pre-injury average weekly wage due to his restrictions. Petitioner presented seven paystubs for his earnings during this period. (PX 12 pp. 1-6) During this period, Petitioner earned \$4,111.63. Petitioner should have earned \$5,325.74 (\$760.82 x 7). This results in lost wages of \$1,214.11. Therefore, Petitioner is entitled to temporary partial disability benefits in the amount of \$809.41 (\$1,214.11 x 2/3).

Based on the above, the Arbitrator finds Respondent liable for 6 weeks of temporary partial disability benefits (April 21, 2023 through June 2, 2023) in the amount of \$809.41 to be paid directly to Petitioner.

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

The Arbitrator adopts the above findings of fact and conclusions of law and incorporates them by reference as though fully set forth herein.

Section 19(1) Penalties

With regards to Section 19(1), the Act reads,

In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$ 30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed \$ 10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

820 ILCS 305/19(1)

Case law dictates that penalties authorized by Section 19(1) serve as a late fee and apply whenever the employer or its carrier simply fails or neglects to make payment or unreasonably delays payment "without good and just cause." *McMahan v. Industrial Comm'n*, 702 N.E.2d 545 at 553 (1998). If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of Section 19(1) penalties is mandatory. *Id* (emphasis added).

The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Board of Education of the City of Chicago v. Industrial Comm'n*, 442 N.E.2d 861 at 865 (1982). The employer has the burden of justifying the delay. *Id*. The employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Id*.

The correspondence between the parties indicates that there was no justification for delay or non-payment for temporary total disability or temporary partial disability benefits. (PX 13) Over and over again, Petitioner's attorney sought benefits and Respondent's attorney responded by stating that he had recommended payments for the benefits. In fact, Respondent's attorney stated several times that the check for temporary total disability benefit was sent out. (PX 13 pp. 15, 16, 18) Petitioner had not received any benefits since May 14, 2024. (T. 26)

Respondent has offered no evidence whatsoever as to why Petitioner should not be entitled to temporary total disability or temporary partial disability benefits.

As the Arbitrator finds that Respondent was unable to show an adequate justification for its delay, an award of Section 19(1) penalties is mandatory. The Arbitrator fines Respondent \$30.00 a day starting December 26, 2024 (Petitioner released to work with restrictions that Respondent is unable to accommodate) through the trial date. As of the date of trial, February 13, 2025, 50 days had passed. \$30.00 per day multiplied by 50 days equals \$1,500.00. Therefore, the Arbitrator imposes penalties of \$1,500.00 under Section 19(1) against Respondent, to be paid directly to Petitioner.

Section 19(k) Penalties

Section 19(k) of the Act reads,

In cases where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay. When determining whether this subsection (k) shall apply, the Commission shall consider whether an Arbitrator has determined that the claim is not compensable or whether the employer has made payments under Section 8(j).

820 ILCS 305/19(k).

While Section 19(1) penalties apply when Respondent delays payment "without good and just cause," Section 19(k) penalties require a lack of good faith. The Commission has the discretion to impose Section 19(k) penalties where there is not only a delay in payment, but the delay was in bad faith. *McMahan*, 702 N.E.2d at 552 citing *Smith v. Industrial Comm'n*, 525 N.E.2d 81 (1988). Good faith must be assessed objectively, thus the question is whether an employer's denial of benefits was reasonable. *Id.* The employer bears the burden of demonstrating that its denial of benefits was reasonable. *Residential Carpentry, Inc. v. Workers' Compensation Comm'n*, 910 N.E.2d 109 at 117 (2009).

The correspondence between the parties indicates that there was no justification for delay or non-payment for temporary total disability or temporary partial disability benefits. (PX 13) Over and

over again, Petitioner's attorney sought benefits and Respondent's attorney stating that he recommended payments for the benefits. In fact, Respondent's attorney stated several times that the check for temporary total disability was sent out. (PX 13 pp. 15, 16, 18) Petitioner had not received any benefits since May 14, 2024. (T. 26)

Respondent has offered no evidence whatsoever as to why Petitioner should not be entitled to temporary total disability or temporary partial disability benefits.

Because Respondent's behavior was in bad faith, penalties under Section 19(k) are warranted. Per fee schedule, Respondent is liable for \$8,782.86 in outstanding medical bills 50% of \$8,782.86 is \$4,391.43. As a result, the Arbitrator fines Respondent \$4,391.43 in penalties under Section 19(k), to be paid to Petitioner directly.

Section 16 Fees

Section 16 of the Act reads,

Whenever the Commission shall find that the employer . . . or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act, or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier.

820 ILCS 305/16

Both Sections 16 and 19(k) are similar in that they require an unreasonable or vexatious delay in payment. *Vulcan Materials Co. v. Industrial Comm'n*, 842 N.E.2d 204 (2005). Here, Respondent's nonresponse to Petitioner's requests for payment of bills was unreasonable and/or vexatious.

The correspondence between the parties indicates that there was no justification for delay or non-payment for temporary total disability or temporary partial disability benefits. (PX 13) Over and over again, Petitioner's attorney sought benefits and Respondent's attorney responded by stating that he had recommended payments for the benefits. In fact, Respondent's attorney stated that the check for temporary total disability was sent out. (PX 13 pp. 15, 16, 18) Petitioner had not received any benefits since May 14, 2024. (T. 26)

Respondent has offered no evidence whatsoever as to why Petitioner should not be entitled to temporary total disability or temporary partial disability benefits.

Since Respondent's delay was unreasonable and vexatious, the Arbitrator will assess attorney's fees and costs under Section 16, which are 20% of the total penalties under Section 19(1) and Section 19(k). The Arbitrator awards \$1,500.00 under Section 19(1) and \$4,391.43 under Section

19(k), which totals \$5,891.43. 20% of \$5,891.43 is \$1,178.29. As a result, the Arbitrator imposes \$1,178.29 in attorney's fees and costs under Section 16 against Respondent, to be paid directly to Petitioner.

As a whole, the Arbitrator fines Respondent a total of \$7,069.72 in fees, costs, and penalties to be paid directly to Petitioner.

It is so ordered:

Jennifer Bae

Arbitrator Jennifer Bae

APRIL 8 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC028276
Case Name	Daniel Gamboa v. Flexicorp, Inc.
Consolidated Cases	22WC028275
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0046
Number of Pages of Decision	30
Decision Issued By	Kathryn Doerries, Commissioner

Petitioner Attorney	Christopher Bassmaji
Respondent Attorney	Michael J. Danielewicz

DATE FILED: 2/17/2026

/s/*Kathryn Doerries, Commissioner*

Signature

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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 Choose reason	☐ Second Injury Fund (§8(e)18)
☒ Modify Choose direction	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL GAMBOA,

Petitioner,

vs.

NO: 22 WC 028276

FLEXICORP, INC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, TTD, medical expenses, and penalties, and being advised of the facts and law, reverses in part and 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 vs. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980).

The Commission affirms and adopts the Arbitrator's findings and conclusions regarding the issue of causation; however, the Commission views the evidence and law differently than the Arbitrator as to the remaining issues, and therefore, reverses in part and modifies the Arbitrator's Conclusions of Law regarding Issues (J), (L), and (M), as set forth below.

Regarding Issue (J), the Commission affirms the Arbitrator's award of the reasonable and necessary medical expenses. Although Respondent did not claim a credit under §8(j) of the Act on the Request for Hearing, Respondent wrote, "See attached medical ledger as Respondent's Exhibit 1." (AX1b) The Commission finds Respondent claimed a credit for paid medical expenses and

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introduced into evidence a payment ledger showing payments made set forth in RX1, and therefore, the Commission modifies the decision of the Arbitrator and awards Respondent a credit for any medical expenses it paid.

Regarding Issue (L), the Arbitrator awarded temporary total disability benefits of \$507.21/week for 39-3/7 weeks, commencing with Petitioner's right shoulder surgery on May 14, 2024, through the date of hearing on February 13, 2025. The Commission finds Petitioner was not entitled to TTD after December 26, 2024, because Petitioner was discharged from care with permanent restrictions on that date, thus establishing Petitioner's condition of ill-being had stabilized and became permanent. "Once an injured employee's physical condition has stabilized, the employee is no longer eligible for TTD benefits because the disabling condition has become permanent." *Mechanical Devices vs. Industrial Comm'n*, 344 Ill. App. 3d 752, 759, 800 N.E.2d 819 (2003). The Commission therefore finds that Petitioner is entitled to temporary total disability benefits of \$507.21/week for a 32-3/7 weeks, commencing May 14, 2024, through December 26, 2024. Respondent disputed TTD and did not pay benefits during this period.

The Commission further finds Petitioner is entitled to maintenance benefits from December 27, 2024, through the date of hearing on February 13, 2025. Petitioner testified he had not worked for Respondent since his right shoulder surgery on May 14, 2024. (T. 25) Petitioner testified Respondent had authorized the right shoulder surgery but failed to pay benefits. (T. 26) Petitioner testified his surgeon had him off work for three months, and thereafter he was released to work with restrictions but was not allowed to return with the restrictions. Petitioner testified he submitted his restrictions to Susanna, the manager at Flexicorp. (T. 26-27) Petitioner later testified he provided his permanent restrictions to Susanna. (T. 28-29) Petitioner testified that Susanna advised him that they did not have work for the time being. (T. 29) Petitioner testified he has been looking for employment. (T. 29) Petitioner admitted a job search log into evidence. (PX16) Petitioner testified the job search log contained the locations where he applied for work within his restrictions. (T. 30) Petitioner further testified that prospective employers advised they would call him if anything came up in the future. (T. 30) On cross-examination, Petitioner testified that Susanna advised him the company could not bring him back to work with his restrictions. (T. 50-51) Petitioner confirmed he personally entered the information onto his job log and confirmed he has not worked since his right shoulder surgery. (T. 49) It is unknown when Petitioner communicated with Susanna regarding his permanent restrictions. The job search log commences with a reported application for employment on January 14, 2025, and ends with a reported application for employment on February 11, 2025. (PX16) This case proceeded to trial on February 13, 2025. The job search log documents a total of 12 contacts with employers in the weeks leading up to the hearing.

Section 8(a) of the Act authorizes an award of maintenance benefits when a claimant is engaged in a prescribed vocational rehabilitation program or a self-directed job search. *Kransky vs. Illinois Workers' Comp. Comm'n*, 2025 IL App (1st) 232483WC-U, P24. Section 8(a) does not place any burden upon claimants to request vocational rehabilitation as a prerequisite for maintenance benefits. *Roper Contracting vs. Industrial Comm'n*, 349 Ill. App. 3d 500, 505, 812

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N.E.2d 65 (2004) Section 9110.10(a) of the Rules Governing Practice before the Commission also does not obligate claimants to request vocational rehabilitation before maintenance can be awarded. *Id.* at 505 (interpreting the rule formally codified as §7110.10(a).)

The Commission finds Petitioner undertook a self-directed job search in good faith after Respondent informed Petitioner it could not accommodate his permanent restrictions. The Commission therefore concludes that Petitioner is entitled to \$507.21/week in maintenance benefits for 7 weeks, commencing December 27, 2024, through February 13, 2025.

Regarding Issue (M), the Commission affirms in part and reverses in part the Arbitrator's decision awarding penalties under §19(l), §19(k), and §16 of the Act.

Regarding penalties under §19(l), the Arbitrator found that Respondent failed to pay TTD benefits without good and just cause after Petitioner's right shoulder surgery on May 14, 2024. In so finding, the Arbitrator relied on the extensive correspondence between the parties which documented repeated demands and requests for payment status, and which documented replies from Respondent's attorney explaining he had recommended payments, and in fact, had stated several times that a lump sum check for past-due TTD benefits was sent out. Respondent had not paid any benefits for this period of temporary disability when the case proceeded to trial on February 13, 2025. The Arbitrator assessed §19(l) penalties of \$30.00 per day during a period of 276 days from May 14, 2024, through the date of trial, for a total amount of \$8,280.00. The Commission affirms and adopts the Arbitrator's award of penalties under §19(l).

Regarding penalties under §19(k), the Arbitrator repeated her finding that Respondent had no justification for failing to pay TTD benefits, based on the extensive email correspondence between the parties and Respondent's representations made therein. The Arbitrator then awarded penalties under §19(k), but instead of calculating 50% of the unpaid TTD, the Arbitrator awarded §19(k) penalties based on 50% of the outstanding medical expenses. Pursuant to §19(k), the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award in situations where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy. 820 ILCS 305/19(k). An award of penalties under §19(k) is "intended to promote the prompt payment of compensation where due and to deter those occasional employers or insurance carriers who might withhold payment from other than legitimate motives." *Jacobo vs. Illinois Workers' Compensation Comm'n*, 2011 IL App (3d) 100807WC, P22. The imposition of penalties under §19(k) is discretionary. *Id.* at P23. In the instant case, the Commission finds Petitioner failed to prove that Respondent's failure to pay portions of the medical bills was unreasonable, vexatious or intentional. We therefore reverse and vacate the award of penalties under §19(k). As Petitioner did not file a petition for review, the question of penalties under §19(k) for non-payment of TTD benefits is not before us.

Regarding penalties under §16, the Commission may award attorney's fees where the employer or its insurance carrier has been guilty of unreasonable or vexatious delay, intentional

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under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of §19(k). Having found Petitioner is not entitled to penalties under §19(k) in this case, we reverse and vacate the award of attorney's fees.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of \$507.21 per week for a period of 32-3/7 weeks, commencing May 14, 2024, through December 26, 2024, that being the period of temporary total incapacity for work under §8(b), and that as provided in §8(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$507.21 per week in maintenance benefits for a period of 7 weeks, commencing December 27, 2024, through February 13, 2025.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the reasonable and necessary medical expenses for treatment provided by Illinois Orthopedic Network of \$34,673.68, as provided under §8(a) and §8.2 of the Act. Respondent is entitled to a credit for paid medical expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay penalties of \$30.00 per day for 276 days from May 14, 2024 through February 13, 2025, for a total amount of \$8,280.00, as provided in §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's award of penalties under §19(k) and §16 of the Act is hereby vacated.

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.

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Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$65,600.00. 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.

February 17, 2026

KAD/swj

O121625

42

/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	22WC028276
Case Name	Daniel Gamboa v. Flexicorp, Inc.
Consolidated Cases	22WC028275
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Jennifer Bae, Arbitrator

Petitioner Attorney	Christopher Bassmaji
Respondent Attorney	Michael J. Danielewicz

DATE FILED: 4/8/2025

*/s/ Jennifer Bae, Arbitrator*Signature**INTEREST RATE WEEK OF APRIL 8 2025 4.00%**

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)

DANIEL GAMBOA

Employee/Petitioner

v.

FLEXICORP

Employer/Respondent

Case # **22** WC **028276**

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 **Bae**, Arbitrator of the Commission, in the city of **Chicago**, on **February 13, 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 20, 2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$39,562.64**; the average weekly wage was **\$760.82**.

On the date of accident, Petitioner was **50** 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 **\$0.00** under Section 8(j) of the Act.

ORDER**Medical Bills**

Respondent shall pay reasonable and necessary medical services as provided in Section 8(a) and 8.2 of the Act: Illinois Orthopedic Network \$34,673.68, per the Fee Schedule. Other medial service bills were awarded under 22WC028275.

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of \$507.21/week for 39 3/7 weeks, commencing May 14, 2024 through February 13, 2025, as provided in Section 8(b) of the Act.

Temporary Partial Disability

Temporary Partial Disability was awarded under 22WC028275.

Penalties/Attorney's Fees

The Arbitrator awards \$8,280.00 under Section 19(l), \$17,336.84 under Section 19(k) and \$5,123.37 under Section 16. Respondent shall pay a total of \$30,740.21 in fees and penalties directly to Petitioner.

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.

Jennifer Bae

Signature of Arbitrator

APRIL 8 2025

[illegible]

ILLINOIS WORKERS' COMPENSATION COMMISSION

DANIEL GAMBOA,
Petitioner,
v.
FLEXICORP,
Respondent.

MEMORANDUM OF DECISION OF ARBITRATOR – 19(b)

I. PROCEDURAL HISTROY

Mr. Daniel Gamboa (“Petitioner”), by and through his attorney, filed an Application of Adjustment of Claim for benefits under the Workers’ Compensation Act (“Act”). 820 ILCS 305/1 *et seq.* (West 2014) Petitioner alleged that he sustained an accidental injury on May 20, 2022, 2021 while employed by Flexicorp (“Respondent”). A hearing was held on February 13, 2025 on the following issues: medical treatment, temporary total disability, temporary partial disability benefits, and penalties and fees.

Petitioner testified in support of his claim. A report prepared by the Respondent's Section 12 examiner, Dr. Scott Sagerman, was submitted into evidence by Petitioner. (PX 10) The parties requested a written decision, including findings of fact and conclusions of law pursuant to the Act. (AX 1B)

II. FINDINGS OF FACT

Petitioner testified that he lives in Chicago. (T. 11-12) He had been living in the current residence for 3 years with his wife, whom he had been married for 35 years. (T. 12)

Petitioner testified that he is currently not employed but had been employed by Respondent in 2021. (T. 12) Petitioner explained that Respondent is a company that makes parts for cars. (T. 12) Petitioner testified that Respondent is located at Grand Avenue and Irving Park Road in Elk Grove Village. (T. 13) Petitioner testified that he started working for Respondent in May of 2010 as a machine operator. (T. 13) Petitioner testified that he never stopped working for Respondent and has not been fired. (T. 14) Petitioner explained that he is not allowed to be back working because of his restrictions. (T. 14) Petitioner testified that his last day that he worked was on May 14, 2024. (T. 14)

Job Duties

Petitioner testified that he was assigned to work with trims that required cleaning and painting the pieces and anything related to maintenance. (T. 13) Petitioner testified that in 2021, he was a machine operator and was cleaning the gutters and roofs, painting, “taking metal off the roof, anything to do with maintenance except electricity.” (T. 13) Petitioner further explained that he did “all kinds of jobs” under maintenance. (T. 14) He worked anywhere from 8 to 10 hours a day. (T. 14)

Accident

Petitioner testified that on May 20, 2022, he and his co-workers were lifting a fan, he damaged his right arm and shoulder. (T. 16-17) Petitioner explained that the fan weighs approximately 25 pounds. (T. 17) Petitioner testified that after injuring his right arm, he went home. (T. 17) Petitioner testified that he reported the accident the following morning when he returned to work. (T. 18)

Petitioner’s Testimony – Regarding Medical Treatment

Following the accident, Petitioner testified that he sought medical treatment. (T. 18) Petitioner testified that he first sought treatment on May 27, 2022 for his right shoulder at Concentra. (T. 20) Petitioner testified that he underwent x-rays and an MRI of his right shoulder. (T. 20)

Petitioner testified that he came under the care of Dr. Tu for his right shoulder on July 7, 2022, at the time when he was also treating for his left shoulder. (T. 20) Petitioner testified that Dr. Tu recommended a surgery and on May 14, 2024, he underwent a surgery for his right shoulder. (T. 23) Petitioner testified that the right shoulder surgery was approved and authorized by workers’ compensation. (T. 23-24)

Petitioner testified that he last saw Dr. Tu on December 26, 2024. (T. 24) Petitioner testified that Dr. Tu discharged him and said that he was at maximum medical improvement (“MMI”). (T. 24) Petitioner testified that he was released with restrictions – no lifting arms above his shoulder and no lifting over 25 pounds. (T. 25) Petitioner testified that these restrictions were permanent. (T. 25)

Petitioner testified that he has not worked since May 14, 2024 because of his restrictions. (T. 25) Petitioner testified that he received workers’ compensation benefit for his left arm but not for his right shoulder. (T. 26) Petitioner testified that he had not received any workers’ compensation benefits since May 14, 2024. (T. 26) Petitioner explained that Dr. Tu placed him on off work for 3 months after the surgery and then placed him on restrictions. (T. 26) He further explained that he was not allowed back to work because of the restrictions. (T. 26) Petitioner testified that he presented his restrictions to Susanna who is the manager for Respondent. (T. 26-27)

Petitioner testified that in 2023, he worked with restrictions earning less than his preinjury wages. (T. 27) Petitioner testified that PX 12 are copies of his check stubs from April 9, 2023 to June of 2023 that showed he made less than \$760 per week. (T. 27-28)

Petitioner testified that after receiving his permanent restrictions on December 26, 2024, he presented to Susana who told him “that for the time being they did not have work.” (T. 28-29)

Petitioner testified that he had been looking for work on his own conducting job searches. (T. 29) Petitioner explained that his wife has cancer and is unable to work 5 days a week and that is why he is looking for work. (T. 29) Petitioner testified that he had been without income for the past 9 months. (T. 28-29)

Petitioner testified that PX 16 is a copy of his job search log that he had been conducting on his own. (T. 30) The document contains the locations where he applied for work within his restrictions. (T. 30) Petitioner testified that they informed him that they will call him when anything comes up in the future. (T. 30)

Petitioner testified that prior to May 20, 2022, he had not experienced pain, any injury, or seek medical treatment for his right shoulder. (T. 31)

On cross-examination, Petitioner testified that on May 20, 2022, he was lifting a fan that weighed 25 pounds with his right hand. (T. 43) He explained that he had a restriction on his left hand and was able to only lift “very few pounds.” (T. 43) Petitioner testified that he reported this injury the next day. (T. 43)

On cross-examination, Petitioner testified that Respondent sent him to get medical attention but he did not remember the date. (T. 44) Petitioner testified that he had injections on his right shoulder but he did not receive any relief. (T. 44) Petitioner testified that he underwent physical therapy for his right shoulder that did not provide any relief. (T. 44-45) He had a surgery on his right shoulder in May of 2024. (T. 45) Petitioner testified that the surgery “helped a bit” with his pain. (T. 45) Petitioner testified that he could move and “lift a bit” after the surgery. (T. 45-46) Petitioner testified that he could work with the restrictions that are in place. (T. 46)

On cross-examination, Petitioner testified that Dr. Sagerman examined him but he was “not sure if it was just on the right.” (T. 47) Petitioner testified that Dr. Tu discharged him with restrictions and placed him on MMI. (T. 48) Petitioner testified that he did not have plans to seek further treatment but “right now I just want to go back to work.” (T. 48)

On cross-examination, Petitioner testified that he had not work or have any source of income since his right shoulder surgery in May of 2024. (T. 49)

On cross-examination, Petitioner testified that he remembered undergoing a functional capacity evaluation (“FCE”) on December 9, 2024 at Best Practice Physical Therapy. (T. 49-50) Petitioner explained that Dr. Tu implemented the permanent restrictions based on the FCE. (T. 50) Petitioner testified that he was not allowed to come back to work based on his restrictions. (T. 50-51)

Summary of Medical Records

On May 27, 2022, Respondent sent Petitioner to Concentra after injuring his right arm and shoulder on May 20, 2022. (PX 1 pp. 244-271) X-rays of Petitioner's right shoulder was taken that showed no acute fractures. (PX 1 p. 245) After a physical examination, Petitioner was diagnosed with right shoulder strain and sub-coracoid impingement of right shoulder. (PX 1 p. 264) Physical therapy was ordered and Petitioner was placed on 10-pound restrictions. (PX 1 pp. 264-265)

On June 6, 2022, Petitioner underwent a physical therapy assessment. (PX 1 pp. 272-282)

On June 8, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 283-297) Petitioner reported having pain with right shoulder abduction and external rotation and pain radiating to his right arm. (PX 1 p. 289) It was noted that Petitioner has significant difficulties with the physical requirements of his job. (PX 1 p. 290) He was placed on 10-pound restrictions and told to return in 7 days for a follow up. (PX 1 p. 291)

On June 8, 2022, Petitioner underwent a physical therapy session. (PX 1 pp. 298-300) It was noted that the overall progress was slower than expected. (PX 1 p. 300)

On June 9, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 301-311) Petitioner complained of having difficulty with overhead and reaching activities. (PX 1 p. 304) After a physical examination and speaking to Petitioner, Dr. Tu recommended left shoulder arthroscopic subacromial decompression with possible rotator cuff repair. (PX 1 p. 304) Petitioner was placed on no lifting over 30 pounds. (PX 1 p. 304)

On June 17, 2022, Petitioner had an MRI of his right shoulder completed at Hawthorn Works Medical Imaging. (PX 1 pp. 316-317; PX 9 pp. 3-4) It showed mild supraspinatus and biceps tendinosis; nonspecific heterogeneity of the superior labrum; mild degenerative changes of the acromioclavicular joint, possible adhesive capsulitis, 0.6 X 1.7 X 2 cm fusiform collection in the subcutaneous soft tissues overlying the acromion. (PX 1 p. 317; PX 9 pp. 3-4)

On June 22, 2022, Petitioner had a follow up at Concentra. (PX 1 pp. 312-327) Petitioner continued to have pain with right shoulder abduction and external rotation. (PX 1 p. 321) An MRI of June 17, 2022 was reviewed and Petitioner was referred to follow up with an orthopedic specialist for "evaluate and treat." (PX 1 p. 322) Petitioner was placed on light duty and told to return to Concentra as needed. (PX 1 p. 322)

On July 7, 2022, Petitioner met with Dr. Tu for a follow up and a referral for his right shoulder. (PX 1 pp. 328-340) Dr. Tu noted that Petitioner had an injury to his right shoulder now but he was working to get an authorization for left shoulder surgery. (PX 1 p. 331) Dr. Tu noted that the surgery for the left shoulder was authorized previously but rescinded. (PX 1 p. 331) Dr. Tu reviewed the MRI of the right shoulder dated June 17, 2022 and noted that it was negative for a full-thickness rotator cuff tear with some degenerative changes over the AC joint. (PX 1 p. 337) Dr. Tu diagnosed Petitioner with right shoulder strain with secondary adhesive capsulitis. (PX 1 p. 338) Dr. Tu recommended a conservative treatment for the right shoulder and performed an

injection to the right shoulder. (PX 1 p. 338) Dr. Tu also recommended that Petitioner continue with physical therapy for aggressive range of motion and strengthening. (PX 1 p. 338) Petitioner was placed on no lifting over 30 pounds and told to return in 1 month for a further evaluation. (PX 1 p. 338)

Petitioner underwent physical therapy sessions for his right shoulder on July 15th, July 19th, July 20th, July 22nd, July 25th, July 27th, July 29th, August 2nd, and August 3rd of 2022. (PX 1 pp. 341-395)

On August 4, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 396-412) It was noted that Petitioner was diagnosed with rotator cuff tear for his left shoulder and surgery was recommended. (PX 1 pp. 396-399) A surgery had not been approved. (PX 1 p. 399) It was noted that Petitioner was diagnosed with adhesive capsulitis of his right shoulder. (PX 1 p. 402) Dr. Tu recommended Petitioner to continue with the course of physical therapy. (PX 1 p. 404) Petitioner was told to return for further evaluation for his right shoulder in 5 weeks. (PX 1 p. 404)

Petitioner underwent physical therapy session for his right shoulder on August 9th, August 11th, August 15th, August 17th, August 19th, August 22nd, August 24th, August 30th, September 1st of 2022. (PX 1 pp. 405-481)

On September 8, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 482-491) Dr. Tu noted that Petitioner's range of motion had improved for his right shoulder but still experiencing pain. (PX 1 p. 485) Petitioner was told to continue with home exercise program and placed on 30-pound restrictions. (PX 1 p. 485) As far as the left shoulder, it was noted that Petitioner was scheduled to see an independent medical examiner and surgery had not been approved. (PX 1 p. 490)

On September 8, 2022, Petitioner underwent a physical therapy session for his right shoulder injury. (PX 1 pp. 492-498)

On October 6, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 499-508) Dr. Tu noted that Petitioner's surgery for his left shoulder had been approved and was scheduled for October 14, 2022 and that he was going to hold off on a cortisone injection for the right shoulder until recovery. (PX 1 p. 502, 507) Petitioner was told to continue with home exercise program and no lifting over 30 pounds. (PX 1 p. 502)

On October 14, 2022, Dr. Tu performed left shoulder arthroscopic rotator cuff repair, left shoulder arthroscopic subacromial decompression, and left shoulder arthroscopic extensive debridement at G & T Orthopaedics and Sports Medicine. (PX 2; PX 3; PX 7)

On October 20, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 509-518) Dr. Tu noted that Petitioner wanted to proceed with an injection for his right shoulder but that he was going to hold off since Petitioner just had a surgery for his left shoulder. (PX 1 p. 512) Petitioner was told to continue with the home exercise program and no lifting greater than 30 pounds. (PX 1 p. 512) Dr. Tu recommended physical therapy – passive range of motion only. (PX 1 p. 517) Petitioner was placed on no work and was told to return in 1 month for evaluation of his progress. (PX 1 p. 517)

On October 24, 2022, an evaluation for physical therapy was performed for the left shoulder and Petitioner was recommended 3 times a week for 4 weeks. (PX 1 p. 519-523)

Petitioner underwent physical therapy sessions for his left shoulder on October 24th, 26th, 28th, 31st, November 2nd, 9th, 11th, 14th, 16th of 2022. (PX 1 pp. 524-566)

On November 17, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 567-577) Dr. Tu performed physical examination of Petitioner and discussed treatment plan for his right shoulder. (PX 1 p. 570) Dr. Tu noted that he would perform a cortisone injection on the next visit and informed Petitioner to continue with the home exercise program. (PX 1 p. 570) For the left shoulder, Dr. Tu recommended Petitioner to continue with physical therapy – passive range of motion only and return in 1 month for further evaluation. (PX 1 p. 575)

Petitioner underwent physical therapy sessions on November 18th, 23rd, 28th, 30th, December 2nd, 6th, 7th, 9th, 12th, and 14th of 2022. (PX 1 pp. 578-639)

On December 15, 2022, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 640-649) Dr. Tu noted that Petitioner still had significant dysfunction in his left shoulder and may need to continue aggressive physical therapy due to persistent limitations in range of motion. (PX 1 p. 646) Dr. Tu placed Petitioner on off work and stated that he may have to consider a postoperative MRI follow by a possible intra-articular cortisone injection. (PX 1 p. 646) For the right shoulder, Dr. Tu noted “I would like his shoulder to calm down a little bit more before we perform the injection.” (PX 1 p. 648)

Petitioner underwent physical therapy sessions on December 16th, 19th, 21st, 22nd, 27th, 29th, 30th of 2022, January 3rd, 4th, 5th, 9th, and 11th of 2023. (PX 1 pp. 650-719)

On January 12, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 720-734) For the left shoulder, Dr. Tu recommended Petitioner to have a postoperative MRI to ensure that the rotator cuff has healed. (PX 1 p. 723) After performing an injection into the right shoulder glenohumeral joint, Dr. Tu recommended aggressive therapy for range of motion. (PX 1 p. 728)

Petitioner underwent physical therapy sessions on January 16th, 18th, 20th, 23rd, 25th, 27th, 30th, and February 1 of 2023. (PX 1 pp. 735-782)

On February 2, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 783-792) It was noted that Petitioner continued to have significant limitations in his range of motion despite aggressive therapy postoperative for his left shoulder. (PX 1 p. 786) Dr. Tu performed an injection into the left shoulder glenohumeral joint and recommended continue with aggressive therapy for range of motion and strengthening. (PX 1 p. 786) Dr. Tu noted that Petitioner’s function was improving for his right shoulder and recommended him to continue aggressive therapy for range of motion activities. (PX 1 p. 791) Petitioner was told to return in 1 months for further evaluation. (PX 1 p. 791)

Petitioner underwent physical therapy sessions on February 7th, 9th, 10th, 13th, 15th, 17th, 20th, and 22nd of 2023. (PX 1 pp. 793-840)

On February 22, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 841-858) For the left shoulder, Dr. Tu noted that Petitioner still has dysfunction to his left shoulder including decreased range of motion as well as pain. (PX 1 p. 855) He is attempting to get authorization for left shoulder manipulation under anesthesia arthroscopic lysis of adhesion and capsulotomy. (PX 1 p. 855) Petitioner was recommended to have aggressive therapy 4 to 5 times a week to help maintain his range of motion. (PX 1 p. 855) Petitioner was placed on 5-pound restrictions for his left shoulder. (PX 1 p. 855) It was noted that a surgery for right shoulder was approved. (PX 1 p. 857) Petitioner was placed on 30-pound restrictions for his right shoulder. (PX 1 p. 857)

Petitioner underwent physical therapy sessions on February 24th, 27th, and March 1st of 2023. (PX 1 pp. 859-874)

On March 1, 2023, at the request of Respondent, Petitioner met with Dr. Scott Sagerman of Hand to Shoulder Associates, S.C. for an independent medical evaluation. (PX 10)

On March 2, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 875-886) For his left shoulder, it was noted that Petitioner was gradually improving as far as his range of motion with therapy. (PX 1 p. 880) Petitioner was placed on 5-pound restrictions for his left shoulder. (PX 1 p. 880) For his right shoulder, Petitioner was recommended to continue therapy with aggressive for range of motion as well as strengthening. (PX 1 p. 885) Petitioner was placed on no lifting greater than 30 pounds. (PX 1 p. 885)

Petitioner underwent physical therapy sessions on March 3rd, 6th, 8th, 10th, 15th, 17th, 20th, 24th, 27th, 29th, 30th, April 3rd and 5th of 2023. (PX 1 pp. 887-957)

On April 6, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 958-969) Petitioner reported worsening symptoms including increased pain and decreased range of motion for his left shoulder. (PX 1 p. 966) Petitioner wanted to proceed with left shoulder manipulation under anesthesia arthroscopic lysis of adhesion and capsulotomy. (PX 1 p. 966) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 966) Dr. Tu noted that Petitioner needs a surgery for his left shoulder and any treatment for right shoulder is on hold. (PX 1 p. 968) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 968)

On May 18, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 970-979) Petitioner continues to have limited range of motion with pain for his left shoulder. (PX 1 p. 973) It was noted that an IME was completed but Dr. Tu did not have a copy of the report. (PX 1 p. 973) The IME doctor recommended an EMG. (PX 1 p. 973) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 973) Dr. Tu recommended that any treatment for the right shoulder on hold until treatment for left shoulder is completed. (PX 1 p. 978) No lifting over 30 pounds for the right shoulder. (PX 1 p. 978)

On June 6, 2023, an EMG study was completed. (PX 1 pp. 980-1002) The study showed all normal limits. (PX 1 pp. 984-985)

On June 15, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1003-1012) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder is completed. (PX 1 p. 1006) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1006) Dr. Tu noted that the EMG study did not demonstrate any significant pathology and that Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1011) Dr. Tu was waiting for approval of the surgery. (PX 1 p. 1011) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1011)

On July 23, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1013-1022) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder is completed. (PX 1 p. 1016) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1016) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1021) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1021) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1021)

On August 24, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1023-1036) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder has completed. (PX 1 p. 1028) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1028) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1035) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1035) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1035)

On September 28, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1037-1055) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1040) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1040) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1040) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder is completed. (PX 1 p. 1054) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1054)

On October 26, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1056-1074) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1068) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1068) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1068) Dr. Tu recommended holding off any treatment for the right shoulder until all treatment for the left shoulder is completed. (PX 1 p. 1073) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1073)

On November 30, 2023, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1075-1092) Dr. Tu concluded that Petitioner required surgical intervention to his right shoulder but Petitioner wanted to hold off until his treatment for his left shoulder completed. (PX 1 p. 1082) Dr. Tu was waiting for approval for the surgery on the left shoulder. (PX 1 p. 1091)

On January 11, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1093-1116) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1068) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1.988) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1098) It was noted that surgery for the right shoulder was approved but

Petitioner wanted to wait his treatment for his left shoulder completed. (PX 1 p. 1115) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1115)

On February 22, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1117-1134) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1131) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1131) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1131) It was noted that surgery for the right shoulder was approved but Petitioner wanted to wait his treatment for his left shoulder completed. (PX 1 p. 1133) Petitioner was placed on no lifting over 30 pounds for his right shoulder. (PX 1 p. 1133)

On April 11, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1135-1152) Petitioner wanted to proceed with surgery for his left shoulder. (PX 1 p. 1131) Dr. Tu was waiting for approval for the surgery. (PX 1 p. 1146) Petitioner was placed on no lifting over 5 pounds for his left shoulder. (PX 1 p. 1146) The surgery for the right shoulder was approved previously and Dr. Tu scheduled it for May 14, 2024. (PX 1 p. 1151)

On May 7, 2024, Petitioner met with Dr. Ronnie Mandal of Illinois Orthopedic Network, LLC on a referral from Dr. Tu. (PX 4 pp. 6-7) Petitioner had a preoperative clearance for his right shoulder. (PX 4 pp. 6-7)

On May 14, 2024, Petitioner met with Dr. Tu at Illinois Orthopedic Network, LLC. (PX 4 pp. 8-9) Dr. Tu performed right shoulder manipulation under anesthesia, right shoulder lysis of adhesions and extensive debridement, right shoulder arthroscopic capsulotomy, and right shoulder arthroscopic subacromial decompression with lysis of adhesions in the subacromial space. (PX 4 p. 8)

Petitioner underwent physical therapy sessions for his right shoulder on May 15th, 16th, 17th, 20th, and 21st of 2024. (PX 1 pp. 1153-1183)

On May 23, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1184-1202) Exam of the right shoulder revealed a clean, dry, and intact incisions. (PX 1 p. 1192) Petitioner was recommended to continue with aggressive physical therapy to the right shoulder 4 times a week for 4 weeks. (PX 1 p. 1192) Dr. Tu noted that Petitioner would like to proceed with surgery for his left shoulder that has not been approved yet. (PX 1 p. 1201) Petitioner was placed on no lifting over 5 pounds. (PX 1 p. 1201)

Petitioner underwent physical therapy sessions for his right shoulder on May 23rd, 28th, 29th, 30th, 31st, June 3rd, 4th, 6th, 7th, 10th, 12th, 13th, 14th, 17th, and 18th of 2024. (PX 1 pp. 1203-1306)

On June 20, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1307-1325) Dr. Tu noted that Petitioner would like to proceed with surgery for his left shoulder that has not been approved yet. (PX 1 p. 1314) Petitioner was placed on no lifting over 5 pounds. (PX 1 p. 1314) For the right shoulder, Dr. Tu noted that Petitioner's function has improved and will need to continue with physical therapy. (PX 1 p. 1324)

On June 20, 2024, Petitioner had a re-assessment for physical therapy. (PX 1 pp. 1326-1328)

Petitioner underwent physical therapy sessions for his right shoulder on June 20th, 21st, 24th, 26th, 28th, July 2nd, 3rd, 5th, 8th, 10th, 12th, 15th, and 17th of 2024. (PX 1 pp. 1329-1409)

On July 18, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1410-1429) Petitioner was recommended to continue with physical therapy for strengthening and placed on no use of right arm restriction. (PX 1 p. 1422) Dr. Tu noted that the surgery for the left shoulder still had not been approved and placed Petitioner on no lifting over 5 pounds. (PX 1 p. 1428)

Petitioner underwent physical therapy sessions for his right shoulder on July 18th, 22nd, 24th, 26th, 29th, August 1st, 2nd, 5th, 7th, 8th, 12th, 14th, 16th, 19th, and 21st of 2024. (PX 1 pp. 1430-1520)

On August 22, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1521-1539) For the right shoulder, it was noted that Petitioner will continue with physical therapy for strengthening and placed on no lifting over 5 pounds. (PX 1 p. 1536) Dr. Tu noted that the surgery for the left shoulder still had not been approved and placed Petitioner on no lifting over 5 pounds. (PX 1 p. 1538)

Petitioner was re-assessed for physical therapy and underwent sessions on August 22nd, 26th, 28th, 30th, September 3rd, 5th, 6th, 9th, 11th, 13th, and 17th of 2024. (PX 1 pp. 1540-1604)

On September 19, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1605-1629) For the right shoulder, it was recommended that Petitioner continue with physical therapy for strengthening. (PX 1 p. 1621) Petitioner was placed on no lifting over 30 pounds for his right shoulder and told to return in 1 month for evaluation of his progress. (PX 1 p. 1621) Dr. Tu noted that the physical therapy ordered for the right shoulder will help with the left shoulder. (PX 1 p. 1628) Petitioner was placed on no lifting over 10 pounds for his left shoulder. (PX 1 p. 1628)

Petitioner was re-assessed for physical therapy and underwent sessions on September 19th, 25th, 26th, 27th, 30th, October 2nd, 4th, 7th, 9th, 11th, and 14th of 2024. (PX 1 pp. 1630-1697)

On October 17, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1698-1722) It was noted that Petitioner was starting on a work conditioning program for his right shoulder which would be for his whole body and that his left shoulder would be involved. (PX 1 p. 1707, 1719) Petitioner was placed on no lifting greater than 30 pounds for his left and right shoulder and work 10-hours a day. (PX 1 p. 1707, 1719)

Petitioner underwent work conditioning sessions on October 17th, 22nd, 23rd, 24th, and 25th of 2024. (PX 1 pp. 1723-1758)

On November 21, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1794-1801) It was noted that Petitioner was being sent for an FCE. (PX 1 p. 1795) Petitioner was placed on no lifting over 10 pounds for his left shoulder and work 10 hours a day. (PX 1 p. 1795) For the right shoulder, Petitioner stated that he did not feel that he could return to normal work because of the overhead activity requirement. (PX 1 p. 1800)

On December 12, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1804-1822) For both shoulders, it was noted that Dr. Tu was waiting for the result of the FCE to determine if Petitioner needed permanent restrictions and placed Petitioner on 10-pound restrictions with 10 hours per day work. (PX 1 p. 1804, 1806)

On December 26, 2024, Petitioner had a follow up with Dr. Tu. (PX 1 pp. 1823-1840) For both shoulders, it was noted that Petitioner required permanent restrictions per the FCE of December 9, 2024 – no lifting greater than 25 pounds on a frequent basis and overhead activities as tolerated. (PX 1 pp. 1823-1824, 1837-1838)

Respondent's Section 12 Examiner – Dr. Scott Sagerman

On March 1, 2023, at the request of Respondent, Petitioner met with Dr. Sagerman of Hand to Shoulder Associates, S.C. for an independent medical evaluation. (PX 10) PX 10 is a report prepared by Dr. Sagerman, dated March 7, 2023.

After reviewing the history documented in the medical records and exam, Dr. Sagerman opined that Petitioner sustained a right shoulder strain with possible labral tear due to the work accident on May 20, 2022. (PX 10 p. 4) Dr. Sagerman further opined that Petitioner had not reached MMI and that he may elect to proceed with right shoulder surgery as recommended by his treating physician. (PX 10 p. 6) With regard to the left shoulder injury that occurred on December 11, 2021, Dr. Sagerman stated that he did not receive any medical records and that any injury sustained to the left shoulder was not caused by the accident that occurred on May 20, 2022. (PX 10 p. 7) With regard to the left hand, Dr. Sagerman recommended Petitioner to undergo EMG. (PX 10 p. 8) He concluded that all treatment Petitioner received thus far are reasonable. (PX 10)

Petitioner's Current Condition

Petitioner testified that currently, he is unable to lift his right arm above the elbow, below the shoulder. (T. 32) He testified that he is unable to lift both arms and is in pain. (T. 33) Petitioner explained that when he is not moving, “there’s no problem” as far as pain. (T. 33)

On cross-examination, Petitioner testified that he did not feel pain while he was testifying. (T. 47)

On re-direct examination, Petitioner testified that if his conditions worsen, he will go back to see Dr. Tu. (T. 53)

Correspondence to/from Petitioner's Attorney to Respondent's Attorney

May 24, 2024 – email from Petitioner's attorney's office to Respondent's attorney: seek TTD payment, attached Dr. Tu's work status report – Petitioner is to remain off work. (PX 13 p. 1)

May 30, 2024 – email from Petitioner's attorney's office to Respondent's attorney: attached a link for Petitioner's medical records from Concentra and seeking TTD. (PX 13 p. 2)

June 3, 2024 – email from Respondent’s attorney to Petitioner’s attorney: asking for the period for the TTD and rate. (PX 13 p. 2)

June 5, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: seeking TTD for 11/25/22 to 12/22/22 and 5/14/22 and TPD for 4/21/23, 4/28/23, 5/5/23, 5/12/23, 5/19/23, 5/26/23, 6/2/23 with paystubs attached. (PX 13 p. 3)

June 17, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: seeking status of TTD and TPD payments. (PX 13 p. 4)

July 15, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: “Following up on this. The case [is] up on our motion on 7/18/24.” (PX 13 p. 4)

July 15, 2024 – email from Respondent’s attorney to Petitioner’s attorney: “Do you have work statuses for the dates claimed?” (PX 13 p. 5)

July 15, 2024 – email from Petitioner’s attorney to Respondent’s attorney: stating that he had sent emails with work status report previously and medical records on a couple of occasions, attached link to medical records. (PX 13 p. 5)

July 15, 2024 – email from Petitioner’s attorney to Respondent’s attorney: Petitioner underwent surgery on May 14, 2024, which was authorized by Respondent, TTD is owed from 11/25/22 to 12/22/22 and 5/14/22 to present. Petitioner is also owed TPD for 4/21/23, 4/28/23, 5/5/23, 5/12/23, 5/19/23, 5/16/23, 6/2/23. “I will be asking the Arbitrator for a trial date and will be seeking fees and penalties as this is clearly vexatious conduct on Respondent’s part.” (PX 13 p. 6)

July 15, 2024 – email from Respondent’s attorney to Petitioner’s attorney: he will review the dates for the TTD and calculates TPD claim to be total \$805.58. (PX 13 p. 7)

July 22, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: attached Dr. Tu’s work status report dated 7/18/24 placing Petitioner on restrictions. Petitioner spoke to Susana and stated to Petitioner that she is waiting to hear from Respondent. Demand for TTD is made. (PX 13 p. 7)

July 23, 2024 – email from Respondent’s attorney to Petitioner’s attorney: seeking 30-day status date and stated that he recommended to his client to issue TTD. (PX 13 p. 8)

July 24, 2024 – email from Respondent’s attorney to Petitioner’s attorney: following up on his last email. (PX 13 p. 8)

July 24, 2024 – email from Petitioner’s attorney to Respondent’s attorney: will ask to push the time to a later slot but cannot agreed to RTC without confirmation that TTD will be paid. (PX 13 p. 8)

July 24, 2024 – email from Respondent’s attorney to Petitioner’s attorney: he will recommend that his client pay TTD and asked the Arbitrator to make the same which will “make them act quicker.” (PX 13 p. 9)

July 25, 2024 – email from Petitioner’s attorney to Respondent’s attorney: he appeared at 9 am for pretrial and asked to be moved to 2 pm which accommodated Respondent’s attorney. (PX 13 p. 9)

July 25, 2024 – email from Respondent’s attorney to Petitioner’s attorney: “Thanks Christopher. See you then.” (PX 13 p. 9)

August 5, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: seeking updates on payment of TTD and TPD. (PX 13 p. 10)

August 5, 2024 – email from Respondent’s attorney to Petitioner’s attorney’s office: “I have made the recommendation. I will follow up with the client on it.” (PX 13 p. 10)

August 19, 2024 – email from Petitioner’s attorney to Respondent’s attorney: this matter is up before Arb Bae tomorrow at 9 am for status on TTD and TPD underpayment. No checks have been received. (PX 13 p. 11)

August 20, 2024 – email from Respondent’s attorney to Petitioner’s attorney: he made recommendation to his client to pay TTD and need to secure a trial date. (PX 13 p. 11)

August 20, 2024 – emails to and from Petitioner’s attorney to Respondent’s attorney: informing the breakout session number 69. (PX 13 pp. 11-12)

September 9, 2024 – email from Respondent’s attorney to Petitioner’s attorney: asking for work status since the last note of 7/18/24, client is likely to pay TTD from 5/14/24 to avoid having a hearing, he has recommended his client to continue to pay until accommodation made or off restrictions, will follow up when benefits are issued. (PX 13 p. 13)

September 9, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: attached Dr. Tu’s work status report dated August 22, 2024 and seeking TTD from 5/14/24 to present, TTD from 11/25/22 to 12/22/22, and TPD from 4/21/23 to 6/2/23. (PX 13 p. 13)

September 10, 2024 – email from Petitioner’s attorney to Respondent’s attorney: TTD lump sum payment must be mailed to the attorney’s office, TTD is owed from 5/14/24 to present and 11/25/22 to 12/22/22 and TPD for 4/21/23, 4/28/23, 5/5/23, 5/12/23, 5/19/23, 5/26/23, 6/2/23, there is no defense to not paying TTD or TPD. (PX 13 p. 14)

September 10, 2024 – email from Respondent’s attorney to Petitioner’s attorney: no need for hearing if TTD from the surgery date is mailed out and other TTD and TPD would be addressed in the final settlement. (PX 13 p. 15)

September 11, 2024 – email from Petitioner’s attorney to Respondent’s attorney: TTD check from the surgery date must be sent to the attorney’s office by Friday and weekly check for TTD should be sent to Petitioner to have the matter RTC, past TTD and TPD is a reminder. (PX 13 p. 15)

September 11, 2024 – email from Respondent’s attorney to Petitioner’s attorney: confirming and hoping the check was sent today or tomorrow. (PX 13 p. 16)

September 13, 2024 – email from Respondent’s attorney to Petitioner’s attorney: he has confirmation that 18 weeks of TTD from the surgery date to today has been sent and starting a weekly payment directly to Petitioner until Petitioner is back to work or off restrictions. (PX 13 p. 16)

September 13, 2024 – email from Petitioner’s attorney to Respondent’s attorney: please sent the check to the attorney’s office for the 18 weeks and weekly thereafter to the Petitioner. He will email Arbitrator to RTC the matter. (PX 13 p. 17)

September 13, 2024 – email from Petitioner’s attorney to Arb. Bae with cc Respondent’s attorney: asking for agreed RTC since Respondent’s attorney represented that TTD from the surgery date will be sent out as well as weekly check to Petitioner directly until he returns to work. (PX 13 p. 19)

September 18, 2024 – email from Petitioner’s attorney to Respondent’s attorney: asking for a confirmation that a check for 18 weeks of TTD was sent to his office and that the client will be issuing checks to Petitioner directly. (PX 13 p. 17)

September 19, 2024 – email from Respondent’s attorney to Petitioner’s attorney: confirmed check sent and weekly will be issued to Petitioner directly, seeking information about Petitioner’s status since it’s been 4 months after the surgery. (PX 13 p. 18)

September 26, 2024 – email from Petitioner’s attorney to Respondent’s attorney: checks still have not arrived, you told me and the Arb. Bae that checks were issued, will be motioning the claim to seek fees and penalties. (PX 13 p. 31)

September 26, 2024 – email from Respondent’s attorney to Petitioner’s attorney: will check to see why the check has not arrived. (PX 13 p. 30)

October 9, 2024 – email from Petitioner’s attorney to Respondent’s attorney: seeking status of TTD checks. (PX 13 p. 28)

October 21, 2024 – email from Petitioner’s attorney to Respondent’s attorney: no TTD and the case is up on October 23, 2024. (PX 13 p. 27)

October 21, 2024 – email from Respondent’s attorney to Petitioner’s attorney: agreed to secure a trial date and reaching out to his client to see why TTD has not been issued. (PX 13 p. 26)

October 23, 2024 – email from Respondent’s attorney to Petitioner’s attorney: confirming trial date of 11/18/24 and seeking work status (doctor’s note) since 8/22/24. (PX 13 p. 26)

November 6, 2024 – email from Respondent’s attorney to Petitioner’s attorney: pretrial date of 11/14/24 set and trial date of 11/18/24 and following up with his client regarding TTD. (PX 13 p. 25)

November 7, 2024 – email from Petitioner’s attorney to Respondent’s attorney: moving trial date from 18th to 19th. (PX 13 p. 24)

November 7, 2024 – email from Respondent’s attorney to Petitioner’s attorney: no objection to moving the trial date from 18th to 19th. (PX 13 p. 24)

November 7, 2024 – email from Petitioner’s attorney’s office to Respondent’s attorney: link to Petitioner’s medical records from Concentra. (PX 13 p. 23)

November 11, 2024 – email from Respondent’s attorney to Petitioner’s attorney: reaching out to his client regarding TTD and seeking information about the left shoulder surgery and when Petitioner would be at MMI. (PX 13 pp. 22-23)

November 11, 2024 – email from Petitioner’s attorney to Respondent’s attorney: confirming a conversation – Petitioner did not have the second left shoulder surgery but recommended for one, 30 pounds restricts for left and right shoulders, Petitioner represented restrictions to his employer and was told no work, IME doctor did not have medical records regarding left shoulder so there is no basis to deny the left shoulder surgery, Respondent authorized right shoulder surgery which Petitioner had 6 months ago without any TTD, will proceed with fees and penalties if no check received by 11/15/24. (PX 13 p. 22)

November 13, 2024 – email from Respondent’s attorney to Petitioner’s attorney: confirming trial set for Monday, hoping to get confirmation for the TTD check. (PX 13 p. 21)

November 14, 2024 – email from Petitioner’s attorney to Respondent’s attorney: no TTD check and seeking information. (PX 13 p. 21)

November 14, 2024 – email from Arb. Bae to the parties: whether the matter was proceeding to trial on 11/18/24. (PX 13 p. 35)

November 14, 2024 – email from Petitioner’s attorney to Arb. Bae with cc Respondent’s attorney: will proceed to trial unless TTD is received by tomorrow. (PX 13 p. 34)

November 15, 2024 – email from Petitioner’s attorney to Arb. Bae with cc Respondent’s attorney: seeking RTC since the Respondent’s attorney informed him that TTD was issued to his office paying through next week, asking for a trial date of 12/10/24 since prior representation had not been met. (PX 13 pp. 33-34)

November 15, 2024 – email from Respondent’s attorney to Arb. Bae and Petitioner’s attorney: agreeing to 12/10/24 trial date.

November 18, 2024 – email from Arb. Bae to the parties: confirming 12/10/24 set for trial. (PX 13 p. 33)

December 6, 2024 – email from Petitioner’s attorney to Respondent’s attorney: no TTD check still, bring a colleague just in case you are called as a witness. (PX 13 p. 37)

December 8, 2024 – email from Petitioner’s attorney to Respondent’s attorney: any word or explanation why he has not received TTD check. (PX 13 p. 37)

I. 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 & Bayle/Hucks*, 08 ILWC 004187 (2010).

In the case at hand, the Arbitrator observed Petitioner during the hearing and finds him to be a credible witness. The Arbitrator compared Petitioner’s testimony with the totality of the evidence submitted and did not find any material contradictions that would deem the witness unreliable.

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

Section 8(a) of the Act states a Respondent is responsible “...for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury...” A claimant has the burden of proving that the medical services were

necessary, and the expenses were reasonable. See *Gallentine v. Industrial Comm'n*, 201 Ill.App.3d 880, 888 (2nd Dist. 1990).

Here, Petitioner testified that he began treating at Concentra on May 27, 2022. (PX 1 pp. 244-271) On May 7, 2024 and May 14, 2024, Petitioner underwent preoperative testing and surgical intervention at Illinois Orthopedic Network with a current outstanding bill in the amount of \$34,673.68 (PX 4 pp. 4-5)

As far as bills for Midwest Specialty Pharmacy, Victory Enterprises and Best Practice Physical Therapy, they were awarded under 22WC028275.

Overall, the Arbitrator finds Petitioner's treatment to be reasonable and necessary and finds that Respondent has not paid for said treatment. Further, Respondent's Section 12 examiner, Dr. Sagerman opined that all treatment to the right shoulder had been reasonable and causally related to the work injury of May 20, 2022. (PX 10)

As such, the Arbitrator orders Respondent to pay for the following outstanding medical services, pursuant to the medical fee schedule and Sections 8(a) and 8.2 of the Act: Illinois Orthopedic Network \$34,673.68.

Issue L, whether Petitioner is entitled to temporary total disability and temporary partial disability benefits, the Arbitrator finds as follows:

The Arbitrator adopts the above findings of fact and conclusion of law and incorporates them by reference as though fully set forth herein.

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

In determining whether a claimant remains entitled to receiving TTD benefits, the primary consideration is whether the claimant's condition has stabilized and whether she is capable of a return to the workforce. *Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n*, 236 Ill.2d 132, 148 (2010). Once an injured employee's physical condition stabilizes, she is no longer eligible for TTD benefits. *Archer Daniels Midland Co. v. Indus. Comm'n*, 138 Ill.2d 107, 118 (1990).

Here, Petitioner testified that he never sought medical treatment for his right arm or shoulder prior to the work accident. (T. 31) He was pain free and asymptomatic prior to his work-related injury of May 20, 2022. (T. 31) Petitioner underwent surgical intervention to the right shoulder on May 14, 2024. (PX 4 pp. 8-9) Dr. Tu placed Petitioner on off work through July 18, 2024 and placed him on restrictions thereafter. (PX 4; PX 1 pp. 1184-1202, 1307-1325, 1410-1429) Respondent is unable to accommodate the restrictions. (T. 28-29) Respondent has not paid any temporary total disability since May 14, 2024.

On December 9, 2024, Petitioner underwent an FCE at Best Practice Physical Therapy. (PX 15) Petitioner's FCE was valid and reliable as he provided full and consistent effort throughout the

test. Petitioner was cooperative and willing to attempt all activities requested of him and did not present any self-limiting behavior. (PX 15)

Based on the above, the Arbitrator finds Respondent liable for 39 3/7 weeks of temporary total disability benefits (May 14, 2024 through February 13, 2025) at a weekly rate of \$507.21, which corresponds to \$19,998.57 to be paid directly to Petitioner.

Petitioner requested temporary partial disability benefits from April 21, 2023 to June 2, 2023 in the amount of \$809.41. This has been awarded under 22WC028275.

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

The Arbitrator adopts the above findings of fact and conclusion of law and incorporates them by reference as though fully set forth herein.

With regards to Section 19(1), the Act reads,

In case the employer or his or her insurance carrier shall without good and just cause fail, neglect, refuse, or unreasonably delay the payment of benefits under Section 8(a) or Section 8(b), the Arbitrator or the Commission shall allow to the employee additional compensation in the sum of \$ 30 per day for each day that the benefits under Section 8(a) or Section 8(b) have been so withheld or refused, not to exceed \$ 10,000. A delay in payment of 14 days or more shall create a rebuttable presumption of unreasonable delay.

820 ILCS 305/19(1)

Case law dictates that penalties authorized by Section 19(1) serve as a late fee and apply whenever the employer or its carrier simply fails or neglects to make payment or unreasonably delays payment "without good and just cause." *McMahan v. Industrial Comm'n*, 702 N.E.2d 545 at 553 (1998). If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of Section 19(1) penalties is mandatory. *Id* (emphasis added).

The standard for determining whether an employer has good and just cause for a delay in payment is defined in terms of reasonableness. *Board of Education of the City of Chicago v. Industrial Comm'n*, 442 N.E.2d 861 at 865 (1982). The employer has the burden of justifying the delay. *Id*. The employer's justification for the delay is sufficient only if a reasonable person in the employer's position would have believed that the delay was justified. *Id*.

The correspondence between the parties indicates that there was no justification for delay or non-payment for temporary total disability or temporary partial disability benefits. (PX 13) Over and over again, Petitioner's attorney sought benefits and Respondent's attorney responded by stating that he had recommended payments for the benefits. In fact, Respondent's attorney stated several

times that the check for temporary total disability benefit was sent out. (PX 13 pp. 15, 16, 18) Petitioner had not received any benefits since May 14, 2024. (T. 26)

Respondent has offered no evidence whatsoever as to why Petitioner should not be entitled to temporary total disability or temporary partial disability benefits.

As the Arbitrator finds that Respondent was unable to show an adequate justification for its delay, an award of Section 19(1) penalties is mandatory. The Arbitrator fines Respondent \$30.00 a day starting May 14, 2024 through the trial date. As of the date of trial, February 13, 2025, 275 days had passed. \$30.00 per day multiplied by 276 days is \$8,280.00. Therefore, the Arbitrator imposes penalties of \$8,280.00 under Section 19(1) against Respondent, to be paid directly to Petitioner.

Section 19(k) Penalties

Section 19(k) of the Act reads,

In cases where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the Commission may award compensation additional to that otherwise payable under this Act equal to 50% of the amount payable at the time of such award. Failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of this Act, shall be considered unreasonable delay. When determining whether this subsection (k) shall apply, the Commission shall consider whether an Arbitrator has determined that the claim is not compensable or whether the employer has made payments under Section 8(j).

820 ILCS 305/19(k).

While Section 19(1) penalties apply when Respondent delays payment "without good and just cause," Section 19(k) penalties require a lack of good faith. The Commission has the discretion to impose Section 19(k) penalties where there is not only a delay in payment, but the delay was in bad faith. *McMahan*, 702 N.E.2d at 552 citing *Smith v. Industrial Comm'n*, 525 N.E.2d 81 (1988). Good faith must be assessed objectively, thus the question is whether an employer's denial of benefits was reasonable. *Id.* The employer bears the burden of demonstrating that its denial of benefits was reasonable. *Residential Carpentry, Inc. v. Workers' Compensation Comm'n*, 910 N.E.2d 109 at 117 (2009).

The correspondence between the parties indicates that there was no justification for delay or non-payment for temporary total disability or temporary partial disability benefits. (PX 13) Over and over again, Petitioner's attorney sought benefits and Respondent's attorney responded by stating that he had recommended payments for the benefits. In fact, Respondent's attorney stated several times that the check for temporary total disability benefit was sent out. (PX 13 pp. 15, 16, 18) Petitioner had not received any benefits since May 14, 2024. (T. 26)

Respondent has offered no evidence whatsoever as to why Petitioner should not be entitled to temporary total disability or temporary partial disability benefits.

Because Respondent's behavior was in bad faith, penalties under Section 19(k) are warranted. Per fee schedule, Respondent is liable for \$34,673.68 in outstanding medical bills 50% of \$34,673.68 is \$17,336.84. As a result, the Arbitrator fines Respondent \$17,336.84 in penalties under Section 19(k), to be paid to Petitioner directly.

Section 16 Fees

Section 16 of the Act reads,

Whenever the Commission shall find that the employer . . . or insurance carrier has been guilty of delay or unfairness towards an employee in the adjustment, settlement or payment of benefits due such employee within the purview of the provisions of paragraph (c) of Section 4 of this Act, or has been guilty of unreasonable or vexatious delay, intentional under-payment of compensation benefits, or has engaged in frivolous defenses which do not present a real controversy, within the purview of the provisions of paragraph (k) of Section 19 of this Act, the Commission may assess all or any part of the attorney's fees and costs against such employer and his or her insurance carrier.

820 ILCS 305/16

Both Sections 16 and 19(k) are similar in that they require an unreasonable or vexatious delay in payment. *Vulcan Materials Co. v. Industrial Comm'n*, 842 N.E.2d 204 (2005). Here, Respondent's nonresponse to Petitioner's requests for payment of bills was unreasonable and/or vexatious.

The correspondence between the parties indicates that there was no justification for delay or non-payment for temporary total disability or temporary partial disability benefits. (PX 13) Over and over again, Petitioner's attorney sought benefits and Respondent's attorney responded by stating that he had recommended payments for the benefits. In fact, Respondent's attorney stated several times that the check for temporary total disability benefit was sent out. (PX 13 pp. 15, 16, 18) Petitioner had not received any benefits since May 14, 2024. (T. 26)

Respondent has offered no evidence whatsoever as to why Petitioner should not be entitled to temporary total disability or temporary partial disability benefits.

Since Respondent's delay was unreasonable and vexatious, the Arbitrator will assess attorney's fees and costs under Section 16, which are 20% of the total penalties under Section 19(1) and Section 19(k). The Arbitrator awards \$8,280.00 under Section 19(1) and \$17,336.84 under Section 19(k), which totals \$25,616.84. 20% of \$25,616.84 is \$5,123.37. As a result, the Arbitrator imposes \$5,123.37 in attorney's fees and costs under Section 16 against Respondent, to be paid directly to Petitioner.

As a whole, the Arbitrator fines Respondent a total of \$30,740.21 in fees, costs, and penalties to be paid directly to Petitioner.

It is so ordered:

Jennifer Bae

Arbitrator Jennifer Bae

APRIL 8 2025

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC011985
Case Name	Maegan Ehrenberg v. The Village of North Riverside
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0047
Number of Pages of Decision	19
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Brent Eames
Respondent Attorney	Theodore Powers

DATE FILED: 2/19/2026

/s/ Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Maegan Ehrenberg,

Petitioner,

vs.

No. 19 WC 11985

The Village of North Riverside,

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 causal connection, medical expenses, prospective medical care, temporary disability, permanent disability, "1. Amount of unpaid medical awarded; 2. Amount of Section 8(j) award; 3. Arbitrator partial rejection of Section 19(f) Motion for Recall for medical award, prospective medical award and Section 8(j) credit award," and "Arbitrator's improper modifications of decision from 19(f) Motion for Recall," and being advised of the facts and law, modifies the corrected Decision of the Arbitrator as stated below and otherwise affirms and adopts the corrected Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded "prospective medical care as outlined by Petitioner's treating medical providers, including any ongoing treatment and recommendations by Dr. Landphair." Petitioner testified that in March of 2022, her pain management doctor, Dr. Landphair, performed adjustments to her spinal cord stimulator. Petitioner has not seen Dr. Landphair since then. Petitioner explained: "[T]here really isn't a need to go back to him, unless so the device will let me know when the battery is low. I will have three months to schedule an appointment to have that swapped out." Typically, the battery needs to be changed every three to four years. The medical records from Dr. Landphair confirm that on March 7, 2022, he tested and reprogrammed the spinal cord stimulator. The record further shows that Petitioner last saw her treating orthopedist, Dr. Verma, on February 19, 2021. At that time, Dr. Verma recommended no further treatment, although he did want Petitioner to follow up. The Commission vacates the award of prospective medical care for lack of current treatment recommendations. However, the Commission recognizes Petitioner has open section 8(a) rights for future medical care that is reasonable, necessary and related to the work accident.

The Arbitrator awarded itemized medical bills “pursuant to the medical fee schedule *** as provided in Sections 8(a) and 8.2 of the Act.” The Commission strikes “pursuant to the medical fee schedule” from the Order part of the Arbitrator’s Decision and from page 11, line 2 of the Findings of Fact and Conclusions of Law.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the corrected Decision of the Arbitrator filed January 30, 2025, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay the itemized medical bills awarded by the Arbitrator, pursuant to §§8(a) and 8.2 of the Act and subject to §8(j) credit and hold harmless.

IT IS FURTHER ORDERED BY THE COMMISSION that the award of prospective medical care is vacated, without prejudice to Petitioner’s open §8(a) rights.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner permanent partial disability benefits for 225 weeks as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the permanent disability to the extent of 45 percent of the person as a whole.

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

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

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

February 19, 2026

SJM/sk

o-2/10/2026

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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	19WC011985
Case Name	Maegan Ehrenberg v. The Village of North Riverside
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Brent Eames
Respondent Attorney	Theodore Powers

DATE FILED: 1/30/2025

/s/William McLaughlin, 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
 CORRECTED ARBITRATION DECISION**

Maegan Ehrenberg

Employee/Petitioner

v.

The Village of North Riverside

Employer/Respondent

Case # **19WC011985**

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 **William McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **November 8, 2024**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **11/12/2018**, 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.

On the date of accident, Petitioner was **38** years of age, ***single*** with **2** dependent children.

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

Respondent is entitled to a credit of **\$199,090.62** under Section 8(j) of the Act, and Respondent shall hold petitioner harmless from any claims by Blue Cross Blue Shield of Illinois and any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule as outlined in ARBX1, including Loyola University Medical Center Professional Charges (\$469.00); Gold Coast Surgicenter (\$31,013.45); Rush Oak Brook Surgical Center (\$59,960.00); Rush Oak Park Hospital (\$128,747.95); Rush University Pain Center Anesthesia (\$6,220.00); and Rush University Pain Center Physician (\$50,070.00) as provided in Sections 8(a) and 8.2 of the Act, as well as prospective medical care as outlined by Petitioner's treating medical providers, including any ongoing treatment and recommendations by Dr. Landphair.

Respondent shall be given a credit of \$199,090.62 for medical benefits that have been paid by Blue Cross Blue Shield of Illinois, 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 permanent partial disability benefits for 225 weeks because the injuries sustained cause 45% loss of use of a person as a whole, pursuant to §8(d)2 of the Act, for the injury.

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

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



 Signature of Arbitrator
JANUARY 30 2025

EHRENBURG 19WC011985**FINDINGS OF FACT**

On November 12, 2018, the Petitioner, Meagan Ehrenberg, was employed as a police officer for the Respondent. The Petitioner testified that she worked as a patrol officer for the Respondent for approximately eighteen years. (Tr. 9-10)

The parties stipulated that on November 12, 2018, the Petitioner suffered an injury which arose out of and occurred in the course of her employment with Respondent. (Arb.1) On the date of accident, the Petitioner was working in her capacity as a patrol officer when she conducted a traffic stop. (Tr.12). While attempting to place the driver of said vehicle under arrest, the Petitioner gripped the driver's door frame of the vehicle with her left hand to prevent the suspect from fleeing the scene. (Tr. 14) At that time, the suspect put the car into gear and sped away as the Petitioner attempted to hold onto the vehicle with her left arm. (Tr.14) The Petitioner immediately felt a pop in her left shoulder as the driver sped off. (Tr.14)

The parties stipulated that the Petitioner reported her accident within the time limits.as provided in the Act. (Arb.1).

When the North Riverside Fire Department responded to the police station upon the request of the Sargent, Petitioner complained of pain in her shoulder (PX1, pg. 4) Petitioner was transported by ambulance to the emergency room of Loyola University Medical Center, where she again complained of pain in her left shoulder which she rated at a 8/10, along with a sensation of warmth. (PX2, pg. 8) After examination and diagnostic imaging, the Petitioner was prescribed pain medications, and her arm was placed in a sling. (PX2. pg. 19) Petitioner was restricted from work and advised to follow-up with an orthopedic specialist for further workup and treatment. (PX2. pg. 19) Petitioner testified that no treating nor examining physicians have ever cleared her for full and unrestricted duties since this date and she has not returned to work in any capacity since the accident. (Tr. 16)

Petitioner presented for an initial evaluation with Dr. Nikhil Verma at Midwest Orthopedics at Rush on November 21, 2018. (PX3, pg. 290). Petitioner reported the immediate onset of left

shoulder pain as a result of the work injury, which had not improved. (PX3, pg. 290) After examination and review of the diagnostic imaging, Dr. Verma recommended a Medrol Dosepak and four weeks of physical therapy. (PX3, pg. 290) Petitioner was restricted from work, with confirmation that she would undergo further diagnostic imaging if her condition failed to improve with conservative treatment. (PX3, pg. 290)

Petitioner returned to Dr. Verma on December 7, 2018, for a follow-up, noting continued soreness, popping, and difficulty with flexion and abduction. Dr. Verma noted concern regarding intraarticular labral pathology and recommended an MRI arthrogram. (PX3, pg. 286). Therapy was placed on hold pending the results of the MR arthrogram, and Petitioner continued to be restricted from work. (PX3, pg. 286).

The MRI arthrogram was completed on December 12, 2018, and the radiologist noted the possibility of occult posterior labral tear. (PX3, pgs. 291-292). Petitioner returned to Dr. Verma on December 14, 2018 to discuss the results. (PX3, pg. 278). After examination and review of the films, Dr. Verma recommended a course of conservative treatment, including injections and physical therapy. (PX3, pg. 278). It was noted that if Petitioner did not improve over the course of the next four weeks with conservative treatment, then she would be a candidate for surgery. (PX3, pg. 278).

On January 11, 2019, Petitioner returned Dr. Verma and reported continued debilitating pain in her left shoulder despite the course of conservative treatment. (PX3, pg. 272) Dr. Verma recommended a left shoulder arthroscopy. (PX3, pg. 272). On February 5, 2019, the Petitioner underwent a left shoulder arthroscopy and with arthroscopic debridement, labral and subacromial bursectomy, and left shoulder mini-open subpectoral biceps tenodesis performed by Dr. Verma at Gold Coast Surgery Center. (PX3, pg. 160) (PX4) Thereafter, Petitioner continued under the care of Dr. Verma, and was recommended a course of post-operative physical therapy and work restrictions. (PX3, pg. 263)

On April 19, 2019, Dr. Verma noted persistent pain and stiffness in Petitioner's left shoulder, and minimal relief with her course of post-operative therapy and treatment. (PX3, pg. 250) It was noted that her recovery was being limited by adhesive capsulitis. (PX3, pg. 250) Petitioner was administered injections into the left shoulder, and was recommended to continue with physical therapy exercises. (PX3, pgs. 250-251)

On May 24, 2019, the Petitioner reported to Dr. Verma that physical therapy and the injections were not providing any benefit, and she was frustrated with her progress. (PX3, pg. 242). Petitioner was recommended to undergo an additional left shoulder surgery, to include of revision shoulder surgery with manipulation under anesthesia. (PX3, pg. 242)

Petitioner attended an independent medical examination with Dr. Bryan Neal on June 24, 2019, pursuant to Section 12 of the Act. (RX1) Dr. Neal concurred with the diagnosis of adhesive capsulitis which he opined was causally related to the subject work accident and concurred that surgery would be appropriate to address Petitioners condition. (RX1, pg. 21 of 23)

On July 9, 2019, the Petitioner underwent a left shoulder arthroscopy with arthroscopic intra-articular capsular release, and left shoulder arthroscopy with extensive debridement including subacromial bursectomy at Rush Oak Brook Surgery Center. (PX3, pg. 95) (RX5) After the surgery, the Petitioner followed up under the care of Dr. Verma.

On August 16, 2019, Petitioner reported continued significant anterior shoulder pain which was limiting her range of motion. Dr. Verma recommended a consultation with a pain specialist for a catheter placement designed to reduce the pain so Petitioner could continue with aggressive therapy exercises. (PX3, pg. 225)

On August 19, 2020, the Petitioner underwent an initial consultation with Dr. William Landphair at the Rush University Pain Center to discuss the proposed tunneled epidural. (PX6, pg. 25) After the evaluation, Dr. Landphair opined that the Petitioner would benefit from tunneled epidural catheter with bupivacaine and clonidine for six weeks to facilitate physical therapy. (PX6, pg. 26) He suggested scheduling the tunneled epidural placement in the operating room under fluoroscopy in conjunction with left shoulder manipulation under anesthesia with Dr. Verma pending approval. (PX6, pg. 26)

At the Respondent's request, Dr. Bryan Neal provided a supplemental report on September 26, 2019, pursuant to Section 12 of the Act to address whether the proposed catheter placement would be approved. (RX2) Dr. Neal opined that the proposed catheter placement was not medically reasonable nor necessary. (RX2, pg. 6) Dr. Neal noted that the Petitioner was temporarily disabled from full duty work, and suspected she would reach maximum medical improvement on or about July 7, 2020. (RX2, pg. 6)

Petitioner saw Dr. Verma on September 30, 2019, to discuss the conclusions of Dr. Neal. (PX3, pg. 220). Dr. Verma opined that the IME report which denied the treatment due to the Petitioner's lack of cervical complaints failed to address the fact that the catheter was not designed to address any cervical problems, but rather to address pain that was limiting the Petitioner's shoulder injury. (PX3, pg. 220). Dr. Verma continued to recommend the proposed procedure and continued to keep the Petitioner from work pending approval of the procedure. (PX3, pg. 220).

Respondent did not approve the proposed treatment, relying on the conclusions by Dr. Neal. Petitioner submitted an application to the Pension Board of the pension fund of the police department of the Village of North Riverside for a line of duty disability pension. (Tr. 18-19) The Pension Board sent the Petitioner to be examined by Dr. Jasper Petrucci for an independent medical examination on or about February 21, 2020. (PX9, Ex. 2) Dr. Petrucci opined at this time that the Petitioner would be permanently disabled from returning to full and unrestricted police work, and that this disability was casually related to the subject work injury. (PX9, Ex. 2)

The Petitioner testified that during this period, she was in pain and that none one of the medications she was prescribed were helping with her pain or symptoms. (Tr.20)

On March 4, 2020, Petitioner returned to see Dr. Landphair for a follow-up evaluation. (PX6, pg. 22) Dr. Landphair opined that her condition could develop into Complex Regional Pain Syndrome if no intervention or treatment is taken. (PX6, pg. 23) Dr. Landphair recommended an EMG and a series of stellate ganglion blocks of the left side with ultrasound. (PX6, pg. 23) Petitioner underwent the recommended EMG at Rush University Medical Center on March 10, 2020, and it was determined to be within normal limits. (PX6, pg. 9)

The Petitioner underwent the initial stellate ganglion block on March 17, 2020. (PX6, pg. 20) Subsequently, her treatment was interrupted due to the COVID-19 pandemic. (PX6, pg. 17) Petitioner attended a telehealth visit with Dr. Landphair on May 7, 2020, reporting worsening pain and symptoms. (PX6, pg. 18). Dr. Landphair recommended moving forward with the series of stellate ganglion blocks. (PX6, pg. 18)

The Petitioner underwent additional stellate ganglion blocks on May 15, 2020, and May 26, 2020. (PX6, pgs. 51, 53)

Petitioner again met with Dr. Landphair on June 16, 2020, where it was noted that Petitioner had complaints of worsening pain, swelling, hypersensitivity, allodynia, hyperalgesia, pitting of the thumb nailbed, intermittent swelling, and decreased range of motion. (PX6, pg. 48) Dr. Landphair diagnosed the Petitioner with complex regional pain syndrome and recommended a trial of a spinal cord stimulator. (PX6, pg. 50)

The Petitioner underwent the placement of dual cervical electrodes for a trial of spinal cord stimulator with C-arm on July 7, 2020. (PX6, pg. 46) She returned to see Dr. Landphair on July 14, 2020, reporting significant improvement in her symptoms following the trial. (PX6, pg. 43) Dr. Landphair confirmed his diagnosis of complex regional pain syndrome type I and recommended the implantation of a permanent cervical spinal cord stimulator. (PX6, pg. 44)

Petitioner returned to Dr. Verma on July 17, 2020, to discuss the denial of the proposed epidural catheter by the workers' compensation carrier. (PX3, pg. 215) Based on the denial, Dr. Verma recommended that the Petitioner continue under the care of Dr. Landphair for the treatment of CRPS with the recommendation that she be examined and provided with an injection for her adhesive capsulitis while under anesthesia for her upcoming spinal cord stimulator implantation. (PX3, pg. 216)

On August 11, 2020, Petitioner underwent a dual placement of cervical electrodes for permanent implantation of spinal cord stimulation at Rush Oak Park Hospital. (PX6, pg. 44) During this procedure, Petitioner also underwent a left shoulder closed manipulation and left shoulder intra-articular injection performed by Dr. Verma. (PX3, pgs. 11-13)

Petitioner followed up with Dr. Landphair after surgery, noting significant improvement following the permanent implantation of the spinal cord stimulator. (PX6, pg. 39) She was recommended to begin physical therapy exercises and to follow up to report on her progress. (PX6, pg. 38)

On or about October 21, 2020, the Petitioner was granted a line of duty disability pension pursuant to Article 3 of the Illinois Pension Code via the Pension Board of The Village of North Riverside Police Pension Fund. (Tr. 23)

On February 8, 2021, Petitioner returned to Dr. Landphair reporting continued improvement. (PX6, pg. 30) Dr. Landphair placed the Petitioner at maximum medical

improvement from a pain standpoint, and confirmed she would need to follow- up annually for continued care of the spinal cord stimulator. (PX6, pg. 31)

Petitioner returned to Dr. Verma on February 25, 2021, noting overall improvement since the implantation of her spinal cord stimulator. (PX3, pg. 210) Dr. Verma released the Petitioner from care with recommendation to continue with a home exercise program which includes stretching and strengthening as tolerated. (PX6, pg. 211)

As part of her obligations under the Pension Code, the Petitioner has returned annually to be examined by the Pension Board's IME, Dr. Petrucci, to confirm her ongoing disability status. (Tr.23) (PX9, Ex. C & D) Petitioner continues to receive disability pension benefits to date. (Tr.24)

On June 3, 2024, at the Respondent's request, the Petitioner presented for another independent medical examination with Dr. Bryan Neal. (RX3) Following the examination and review of the updated medical records, including the evidence deposition transcripts of both Dr. Landphair and Dr. Petrucci, Dr. Neal concluded that the Petitioner has a permanent, 10-pound weight lift restriction in the left upper extremity up to shoulder level. (RX3, pg. 61) He also opined that the spinal cord stimulator was effective and therefore it was a reasonable treatment option. (RX3, pgs. 60-61)

The Petitioner testified testified that there is not a day that goes by that she does not have pain in her left upper extremity. This has resulted in her being forced to rely upon her right arm for approximately 90% of tasks and activities of daily living. (Tr.25) Petitioner testified that she struggles with activities which include repetitive movements, such as raking, mopping, or sweeping, and she has limited range of motion in the shoulder. (Tr.25)

The Petitioner testified was an avid runner prior to this injury, running three marathons over a period of five weeks, but she is limited to only walking following the injury. (Tr.25) She is unable to participate in any activities which would jostle her person due to the issues it would create with the placement of her spinal cord stimulator. (Tr. 26) She no longer goes to the gym since suffering her injuries. (Tr.34)

Petitioner testified that at the time of the hearing she worked as a part-time nanny (Tr.27-28) Her duties generally include caring for two small children, including preparing their meals, supervising play, and educational games. (Tr.27) Petitioner testified that she struggles with many

physical requirements of this job, including the inability to be physically active with the children, or pick the children up off the ground. (Tr.28)

Deposition of Dr. William Landphair

Dr. Landphair testified via evidence deposition that he is board certified in anesthesiology and pain medicine, and he has authored numerous publications and research related to chronic pain, chronic regional pain syndrome, and treatment with neurostimulators. (PX8, pg. 7) Dr. Landphair testified based upon a reasonable degree of medical certainty that the subject work incident of December 12, 2018, developed into complex regional pain syndrome. (PX8, pg. 38) Dr. Landphair testified given the Petitioner's medical treatment and condition of ill-being, she should be permanently restricted from any activities which could cause trauma to her, including extreme flexion/extension at the neck or waist. (PX8, pgs. 37-38) Dr. Landphair testified Petitioner will require future medical care related to maintenance of her spinal cord stimulator, including replacement of her internal pulse generator, and reprogramming of the device if there are any type migratory issues with the leads. (PX8, pg. 31)

Deposition of Dr. Jasper A. Petrucci

Dr. Petrucci testified in his evidence deposition, that he is a board-certified orthopedic surgeon. (PX9, pg. 6) Dr. Petrucci was retained by the Pension Board of the North Riverside Police Pension Fund to examine the Petitioner, and that he frequently performs independent medical examinations at the request of pension boards, and in workers' compensation claims. (PX9, pgs. 8-9) The initial evaluation of the Petitioner occurred on February 21, 2020. (PX9, pg. 8) Dr. Petrucci testified that based upon his examination of the Petitioner, and his review of the related medical records, it is his opinion that Petitioner sustained a traction injury to the left shoulder that led to pain and decreased range of motion. (PX9, pg. 17) Dr. Petrucci testified that the traction injury was a direct result of the incident which occurred on December 12, 2018. (PX9, pg. 19) Dr. Petrucci further opined that the Petitioner had a fairly severe case of adhesive capsulitis which he believed within a degree of medical certainty caused her to be permanently unable to return to the full and unrestricted duties of a police officer. (PX9, pgs. 18-19)

After the initial examination Dr. Petrucci examined the Petitioner again on December 29, 2021, and February 10, 2022. (PX9, EX C&D) Dr. Petrucci reviewed the updated medical records from the Petitioner's treatment for complex regional pain syndrome, including the spinal cord stimulator treatment. (PX9, pg. 24) Dr. Petrucci opined that as of February 10, 2022, the Petitioner had reached maximum medical improvement, and that no further surgical or conservative measures would be rendered to allow her to return to the full duty as a police officer. (PX9, pg. 33) Dr. Petrucci testified based upon a reasonable degree of medical certainty to that the subject work accident was a causative factor in the Petitioner's current condition of ill-being, and her resulting permanent medical restrictions which preclude her from working as a police officer. (PX9, pgs. 34-35)

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

Based upon the greater weight of the evidence presented, the Arbitrator finds that the Petitioner's current condition of ill-being is causally connected to the work accident of December 12, 2018.

The evidence is presented established that the Petitioner was in good health, and she suffered from no pain or problems related to her left shoulder or her left arm prior to the work accident. In addition, the evidence presented prove that the Petitioner's shoulder injury, including severe adhesive capsulitis, is causally related to her work accident. In reaching said finding, Arbitrator finds the opinions of Dr. Landphair to be more credible and persuasive than the opinions of Dr. Neal.

Dr. Landphair concluded that the Petitioner had objective symptoms of complex regional pain syndrome and opinioned that petitioner met the criteria for his diagnosis on or about June 16, 2020. this was approximately one year after Dr. Neal last examined the Petitioner on or about June 24, 2019. In reaching said conclusion Arbitrator notes that Dr. Neal did not reexamine the Petitioner again until June 3, 2024, which was approximately four years after the Petitioner underwent her permanent implantation of the spinal cord stimulator, resulting in her symptoms to be better controlled. Dr. Neal conclusions are in contrast of the medical records presented which and testimony and conclusions of Dr. Landphair, who testified why the Petitioner fit his diagnosis of complex regional pain syndrome. The Arbitrator gives greater weight to the testimony of Dr. Landphair, then the opinions of Dr. Neal, who examined the Petitioner some time later after her procedures.

Arbitrator also notes that Dr. Neal did agree that the Petitioner suffered from, "an element of neurogenic pain . . . from her traction injury," and that the medical treatment undergone by the Petitioner, including the implantation spinal cord stimulator, was a reasonable treatment option. (RX3, pgs. 60-61)

Based upon the the Petitioners testimony, the medical notes and records, the testimony of Dr. Landphair, and the testimony of Dr. Petrucci, the Arbitrator finds that the Petitioner's current condition of ill-being is causally connected to the work accident of December 12, 2018.

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?

O. Prospective medical

AAAGiven the Arbitrator's finding regarding casual connection, greater weight of the the Arbitrator finds that all claimed medical services provided to Petitioner were reasonable and necessary, and further finds that the Petitioner is entitled to payment of all related medical expenses, as well as prospective medical care as prescribed by the Petitioner's treating medical providers, including ongoing treatment as recommended by Dr. Landphair, as discussed above,

Section 8(a) of the Illinois Workers' Compensation Act mandates that the Respondent shall provide and pay for all the necessary surgical services which are reasonably required to cure or relieve from the effects of the accidental injury. 820 ILCS 305/8(a) Medical care under Section 8(a) is continuous as long as such care is required to relieve the effects of the injury. *Freeman United Coal Mining Co. v. Industrial Commission*, 81 Ill.2d 335 (1980) The question of whether medical care should be awarded is whether said care is reasonable and necessary to cure or relieve from the effects of the accidental injury. *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill.App.3d 705 (2d Dist. 1997) It is not the Petitioner's burden to guarantee a good result from a proposed surgical operation to obtain prospective medical benefits under the Act. Rather, the standard is simply whether said proposed medical treatment is medically reasonable and necessary. *Plantation Mfg. Co. v. Industrial Comm'n*, 294 Ill.App.3d 705 (2d Dist. 1997)

Based upon the medical evidence, the Petitioner has established her burden of proof. Therefore, Petitioner is entitled to her past medical expenses, as well as future medical care as prescribed by his treating medical providers. The Arbitrator finds the Petitioner's testimony

complaints of pain and disability to be credible. Accordingly, the Arbitrator awards all medical expenses pursuant to the medical fee schedule as outlined in ARBX1, including Loyola University Medical Center Professional Charges (\$469.00); Gold Coast Surgicenter (\$31,013.45); Rush Oak Brook Surgical Center (\$59,960.00); Rush Oak Park Hospital (\$128,747.95); Rush University Pain Center Anesthesia (\$6,220.00); and Rush University Pain Center Physician (\$50,070.00) as provided in Sections 8(a) and 8.2 of the Act, as well as prospective medical care as outlined by Petitioner's treating medical providers, including any ongoing treatment and recommendations by Dr. Landphair.

L. What is the nature and extent of the injury?

In evaluating the claimant's claim for PPD benefits, the Arbitrator refers Section 8.1b of the Illinois Worker's Compensation Act. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that Respondent's IME, Dr. Neal, provided an upper extremity impairment of 14%, which is the equivalent to 8% whole person impairment. The Arbitrator notes that this level of impairment does not necessarily equate to permanent partial disability under the Workers' Compensation Act, but instead is a factor to be considered in making such a disability evaluation. Dr. Neal noted the methodology he used in reaching the impairment rating, which confirmed there is no specific shoulder region grid for adhesive capsulitis. (RX3, pg. 62) As a result, Dr. Neal utilized a diagnosis of glenoid labrum/SLAP tear to complete his impairment rating. (RX3, pg. 62) The Petitioner's diagnosis of complex regional pain syndrome was not considered by Dr. Neal in rendering his opinions. As discussed above, the Arbitrator gives less weight to Dr. Neal's conclusions regarding the Petitioner's current condition of ill-being.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that Petitioner was employed as a police officer. After the work accident, Arbitrator finds the Petitioner cannot return to work at her prior occupation. Since this time, the Petitioner has worked

as a part-time nanny. Petitioner testified credibly regarding the physical limitations and pain she experiences when attempting even moderate physical activity, which interferes with her ability to perform some of the essential functions of the job. As such, the Arbitrator gives this factor greater weight in determining permanent partial disability.

With regard to subsection (iii) of §8.1 b(b), the Arbitrator notes that Petitioner was 38 years old at the time of the accident and 44 at the time of the permanency hearing. The Arbitrator views Petitioner could remain in the workforce in some capacity.. The Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of §8.1 b(b), Petitioner's future earnings capacity, the Arbitrator notes that the Petitioner is physically unable to return to her prior occupation at the time of hearing, and there is no other evidence regarding her future earning capacity. At the time of the hearing Petitioner was earning college credit in an attempt to obtain an college degree. The Arbitrator assigns some weight to this factor.

With-regard to subsection (v) of §8.1 b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that Petitioner suffered a traction injury to her left shoulder, which developed into severe adhesive capsulitis. The Petitioner underwent three separate surgeries for her left shoulder condition. Additionally, the Petitioner developed complex regional pain syndrome in her left upper extremity, which resulted in the permanent implantation of a spinal cord stimulator. The undisputed medical evidence confirms that due to the foregoing injuries, the Petitioner has been left with permanent physical restrictions which preclude her from performing the full and unrestricted duties of a police officer, with Respondent's IME suggesting that a permanent ten-pound lifting restriction would be appropriate.

The Petitioner's testified that she continues to suffer from disabling pain and loss of mobility to date, which impacts most of her activities of daily living. These limitations also impact her ability to perform her current occupational as a part-time nanny. The medical records document continued loss of range of motion in the left arm, left shoulder, and strength. She continued with pain complaints. Because of these facts, the Arbitrator gives greater weight to this factor.

§8.1b and by considering the relevance and weight of all five factors, the Arbitrator finds that as a result of the December 12, 2018 accident, Petitioner has sustained a permanent loss of use of his person as a whole to the extent 45% pursuant to Section 8(d)2 of the Act.

N. Is Respondent due any credit?

Section 8(j) provides that in the event the injured employee receives benefits, including medical, surgical or hospital benefits under any group plan covering non-occupational disabilities contributed to wholly or partially by the employer, which benefits should not have been payable if any rights of recovery existed under this Act, then such amounts so paid to the employee from any such group plan as shall be consistent with, and limited to, the provisions of paragraph 2 hereof, shall be credited to or against any compensation payment for temporary total incapacity for work or any medical, surgical or hospital benefits made or to be made under this Act. 820 ILCS 305/8(j)(1) (West 2014). In the instant case, based upon the Petitioner's testimony, and the medical records in evidence, the greater weight of the evidence supports the conclusion that the Petitioner's group health insurance policy made the related payments by Blue Cross Blue Shield as itemized in Arbitrator's Exhibit 1, and a credit subject to Section 8(j) would be applicable.

Based upon the foregoing, Respondent shall be given a credit of \$199,090.62 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.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032833
Case Name	Monty Millenbine v. Ehrhart Farm, LLC
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0048
Number of Pages of Decision	29
Decision Issued By	Maria Portela, Commissioner

Petitioner Attorney	James Ruppert
Respondent Attorney	Michelle LaFayette

DATE FILED: 2/20/2026

/s/Maria Portela, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MONTY D. MILLENBINE,

Petitioner,

vs.

NO: 22WC32833

EHRHART FARM, LLC,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, TTD, nature and extent, and "Other: (1) Respondent 5(b) credit; (2) Vocational Rehabilitation; (3) Maintenance benefits; (4) Causation – urinary conditions," and being advised of the facts and law, affirms and adopts, with the following changes, the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Regarding Respondent's entitlement to credit under §5(b) of the Act, we expand upon the Arbitrator's statement on page 21 and provide additional analysis. In *Selleck v. IC*, 233 Ill. App. 3d 17 (4th Dist. 1992), the appellate court held, "we see no reason to compel the employer to file an entirely separate action to protect its section 5(b) rights. Thus[,] we hold that the Commission was a proper forum for such a determination." *Id.* at 19-20. Subsequently, in *Scott v. IC*, 184 Ill. 2d 202 (1998), the Illinois Supreme Court approved of the rationale in *Selleck* when it stated, "under section 5(b) of the Act, an employer may make a claim for credits following the conclusion of a third-party proceeding without having obtained a lien in that proceeding." *Id.* at 216-17. The Court found "the Commission...is the proper place to determine whether an employer or its insurer is entitled to credits for amounts received by an employee in a third-party proceeding when lien rights have not been adjudicated by the circuit court." *Id.* at 218.

In the case at bar, Petitioner settled his third-party claim for \$500,000.00 (*Rx3*) but it is not clear whether he actually filed a lawsuit. At the hearing, Petitioner's attorney did not dispute Respondent attorney's statements that Respondent did not intervene in the civil matter because no

case had actually been filed in court. *T.20, 24*. Based on the holdings in *Selleck* and *Scott*, the Commission has jurisdiction to determine the amount of Respondent's §5(b) credit. Section 5(b) of the Act states, in relevant part:

Where the injury or death for which compensation is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some person other than his employer to pay damages, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act. In such case, however, if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or personal representative including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act.

Out of any reimbursement received by the employer pursuant to this Section the employer shall pay his pro rata share of all costs and reasonably necessary expenses in connection with such third-party claim, action or suit and where the services of an attorney at law of the employee or dependents have resulted in or substantially contributed to the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement.

820 ILCS 305/5.

Respondent is entitled to a reimbursement for workers' compensation benefits paid up to the amount of Petitioner's settlement or \$500,000.00. However, Respondent is required to pay its pro rata share of costs and reasonable expenses along with statutory attorney's fees of 25%. In the case at bar, Petitioner chose not to introduce evidence of any costs or expenses associated with his settlement. The Commission finds it is Petitioner's responsibility to introduce evidence of such costs and expenses. *See Ratcliff v. Univ. of Ill.*, 2014 Ill. Wrk. Comp. LEXIS 280 ("The burden of proof is on Petitioner to provide the Commission and any reviewing authority with a sufficient record from which to determine the amount of credit, if Petitioner disputes the amount involved." *Citing Padgett v. IC*, 327 Ill. App. 3d 655, 661 (1st Dist. 2002)). Therefore, we find Respondent is only responsible for paying the statutory 25% attorney's fees.

Respondent claims it "paid a total of \$424,372.73 for medical and lost time benefits to or on Petitioner's behalf" but it did not show its calculations and this total is not listed on its claim payment history. *R-brief at 13, Rx1*. In any event, we find that Respondent's credit for medical expenses paid is limited to the amount of the fee schedule in §8.2 of the Act. Therefore, we find Respondent is entitled to §5(b) credit for up to \$500,000.00 in accrued benefits, which is the amount of Petitioner's third-party settlement, but it is required to pay statutory 25% attorney's fees of up to \$125,000 until the credit is exhausted. The parties stipulated that Respondent paid \$80,000.00 in TTD and \$44,000.00 in maintenance, which equals \$124,000.00 and almost covers Respondent's maximum required attorney's fee contribution even before medical expense payments are included. We find that Respondent is entitled to credit for medical expenses paid but only to the extent of the fee schedule in §8.2 of the Act. Respondent is not entitled to credit

for amounts paid that exceed the fee schedule. The parties did not introduce evidence of the fee schedule amounts corresponding to the medical bills.

Respondent's obligation to pay benefits pursuant to this Decision is suspended until it fully recovers 75% of the awarded temporary total disability, maintenance, medical expenses at the fee schedule rate and other benefits, if any, which Respondent has already paid through the date of hearing. After that, Respondent shall pay, unless an overpayment remains, 25% (as contribution for attorney's fees) of the benefits due until the full amount recovered by Petitioner (\$500,000.00) is exhausted. If there are any benefits remaining to be paid to Petitioner, after Respondent has fully recovered any overpayment, Respondent shall pay those at 100%.

On page 2, in the third sentence of the second full paragraph, we strike "January 24, 2025" and replace with "January 25, 2024." On page 18, in the last sentence of the second paragraph, we insert "months" after "fifteen (15)". On page 18, we delete the entire last paragraph starting with, "The Arbitrator is unaware of, and Respondent..."

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,000.00 per week for a period of 56-1/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,000.00 per week for a period of 66-5/7 weeks, that being the period of maintenance under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner \$36,547.96 in outstanding charges, \$2,431.69 for Medicare's subrogation interest, \$423.48 for Cigna's subrogation interest, \$152.44 for Allstate's subrogation interest, \$98.00 for DentalWorks USA's subrogation interest and \$38.00 for Petitioner's out-of-pocket medical expenses for reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these outstanding charges and subrogation interest that is reflected on the claim payment history exhibit.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner \$7,550.98 for vocational benefits under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION Respondent pay to Petitioner the sum of \$1,000.00/week for life, commencing November 27, 2024, as provided in Section 8(f) of the Act, because the injury caused the permanent and total disability of Petitioner.

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent is entitled to §5(b)

credit for up to \$500,000.00 in accrued benefits, which is the amount of Petitioner's third-party settlement, but it is required to pay statutory 25% attorney's fees of up to \$125,000 until the credit is exhausted. The parties stipulated that Respondent paid \$80,000.00 in TTD and \$44,000.00 in maintenance, which equals \$124,000.00 and almost covers Respondent's maximum required attorney's fee contribution even before medical expense payments are included. We find that Respondent is entitled to credit for medical expenses paid but only to the extent of the fee schedule in §8.2 of the Act. Respondent is not entitled to credit for amounts paid that exceed the fee schedule. The parties did not introduce evidence of the fee schedule amounts corresponding to the medical bills.

Respondent's obligation to pay benefits pursuant to this Decision is suspended until it fully recovers 75% of the awarded temporary total disability, maintenance, medical expenses at the fee schedule rate and other benefits, if any, which Respondent has already paid through the date of hearing. After that, Respondent shall pay, unless an overpayment remains, 25% (as contribution for attorney's fees) of the benefits due until the full amount recovered by Petitioner (\$500,000.00) is exhausted. If there are any benefits remaining to be paid to Petitioner, after Respondent has fully recovered any overpayment, Respondent shall pay those at 100%.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, the petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

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.

February 20, 2026

/s/ Maria E. Portela

SE/

/s/ Christopher A. Harris

O: 1/15/26

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SPECIAL CONCURRING OPINION

I concur with the Majority's decision to affirm and adopt most of the Arbitrator's decision. However, I do not believe it necessary to strike the last paragraph on page 18 of his decision. In my view, a vocational expert is qualified to review the evidence and opine concerning the type of work a petitioner can perform. His or her opinion need not be the same as a treating physician. Of course, the weight to be given such an opinion depends on the circumstances of each case. I believe the Arbitrator could properly consider the vocational opinion in this case.

/s/ Marc Parker

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC032833
Case Name	Monty Millenbine v. Ehrhart Farm, LLC
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	24
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	James Ruppert
Respondent Attorney	Michelle LaFayette

DATE FILED: 4/18/2025

/s/ Bradley Gillespie, Arbitrator
Signature

INTEREST RATE WEEK OF APRIL 15 2025 4.06%

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**

Monty D. Millenbine

Employee/Petitioner

v.

Ehrhart Farm, LLC

Employer/Respondent

Case # **22** WC **032833**

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 **February 4, 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 Vocational Benefits

FINDINGS

On **7/20/2022**, Respondent *was* operating under and subject to the provisions of the Act.

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

On this date, Petitioner *did* 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 **\$78,000.00**; the average weekly wage was **\$1,500.00**.

On the date of accident, Petitioner was **65** years of age, *married* with **0** dependent children.

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

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

Respondent shall be given a credit of **\$80,000.00** for TTD, **\$0.00** for TPD, **\$44,000.00** for maintenance, and **\$0** for other benefits, for a total credit of **\$124,000.00**.

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

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **\$1,000.00/week** for **56-1/7ths** weeks, commencing **7/21/2022** through **8/17/2023**, as provided in Section 8(b) of the Act. Respondent shall be given a credit of **\$56,142.86** for temporary total disability benefits that have been paid.

Respondent shall pay Petitioner maintenance benefits of **\$1,000.00/week** for **66-5/7ths** weeks, commencing **8/18/2023** through **11/26/2024**, as provided in Section 8(a) of the Act. Respondent shall be given a credit of **\$66,714.29** for maintenance benefits that have been paid.

Respondent shall pay directly to Petitioner **\$36,547.96** in outstanding charges, **\$2,431.69** for Medicare's subrogation interest, **\$423.48** for Cigna's subrogation interest, **\$152.44** for Allstate's subrogation interest, **\$98.00** for DentalWorks USA's subrogation interest and **\$38.00** for Petitioner's out-of-pocket medical expenses for reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these outstanding charges and subrogation interest that is reflected on the claim payment history exhibit.

Respondent shall pay vocational benefits totaling **\$7,550.98**.

Respondent shall pay Petitioner permanent and total disability benefits of **\$1,000.00/week** for life, commencing **11/27/2024**, as provided in Section 8(f) of the Act. Respondent shall be given a credit of **\$1,142.85** for permanent total disability benefits that have been paid.

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.

Bradley D. Gillespie

Signature of Arbitrator

APRIL 18 2025

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION**MONTY D. MILLENBINE,****Petitioner,****V.****EHRHART FARM, LLC,****Respondent.**

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CASE NO.: 22 WC 032833**DECISION OF ARBITRATOR****PROCEDURAL POSTURE**

On December 19, 2022, Monty D. Millenbine [hereinafter, "Petitioner"] filed an Application for Adjustment of Claim alleging injuries to both legs, both hips, both feet, bladder/urology, ribs, teeth, hearing, head, Body-As-A-Whole and other body parts while employed with Ehrhart Farm, LLC [hereinafter, "Respondent"] occurring on July 20, 2022. (Arb. Ex. 2) This matter proceeded to hearing on February 4, 2025, before an Arbitrator of the Illinois Workers' Compensation Commission in Collinsville, Illinois. (Arb. EX. 1) The following issues were in dispute:

- Causal Connection;
- Medical Expenses;
- Maintenance;
- Nature and Extent of Injuries; and
- Vocational Benefits.

FINDINGS OF FACT**Testimony**

Petitioner testified that on July 20, 2022, he worked for Respondent as a truck driver. His job duties as a truck driver were to operate tractor-trailers and haul anything his employer asked him to transport. (Tr. pp. 29-30) On July 20, 2022, Petitioner was hauling a "load of chips" in a southerly direction on Illinois Route 37 and operating his vehicle immediately behind a co-worker's tractor-trailer when a vehicle traveling in a northerly direction crossed the centerline, side swiped his co-worker's vehicle before crashing head-on into Petitioner's vehicle. (PX 3; Tr. pp. 30-31) Petitioner described the wreck as a "severe hit" causing fatal injuries to both persons in the northbound vehicle and causing his tractor-trailer to overturn. (PX 3; Tr. p. 31) Due to the damage to his tractor, Petitioner had to be "cut out" of his vehicle. (Tr. p. 32)

Petitioner testified he was life flighted from the scene of the wreck to Deaconess Hospital where he was admitted for two weeks. (Tr. p. 33) After his two weeks admission at Deaconess Hospital, he was transferred to Deaconess Encompass Rehab which is a rehab facility where he stayed for several more weeks before being discharged home. (Tr. pp. 33-34) Petitioner stated he followed up with an orthopedic doctor, Dr. Fehrenbacher, a urologist named Dr. Moore, a urologist

at Washington University, a provider for a hearing aid, a provider for dental care, a provider of vision care and for physical therapy care at Fairfield Memorial Hospital. (Tr. pp. 34-35)

Petitioner testified he fractured his left femur, right tibia, left hip, multiple ribs, and sternum in the wreck in addition to having kidney and urologic injuries. (Tr. p. 35) Petitioner clarified that his urologic injury was the inability to urinate/void on his own volition and having to use a catheter to void. (Tr. p. 35) Petitioner testified Dr. Fehrenbacher imposed permanent restrictions on August 17, 2023, that consisted of not being able to climb a ladder and being able to use a cane. (Tr. p. 36)

Petitioner stated from August 18, 2023, through January 24, 2024, he was searching for work by telephone and in person. (Tr. pp. 36-37) Petitioner sent a letter to the Respondent's insurance company on January 25, 2024, requesting a vocational rehabilitation assessment. (Tr. p. 38; PX 14) Petitioner stated Respondent never offered him any vocational assistance, other than weekly checks, after he sent the January 24, 2025, letter. (Tr. p. 39) Petitioner stated he began to work with Mr. Rosene to find a new job starting near the end of January 2024 through November 2024. *Id.* Petitioner stated Mr. Rosene charged Petitioner for the vocational services he provided, and he could not pay so his attorney paid those charges totaling \$7,550.98. (Tr. pp. 39-41; PX 15) Petitioner stated despite his and Mr. Rosene's efforts, he did not find employment. (Tr. p. 41)

As to his work with Mr. Rosene, Petitioner stated they would meet in person every two weeks, and he would talk to Mr. Rosene over the phone in between in person meetings. (Tr. p. 41) Petitioner stated Mr. Rosene helped him create a cover letter and resume for potential employers (Tr. p. 42) Mr. Rosene set up an email account for Petitioner so he could communicate with potential employers and an Indeed account so Petitioner could search for employment and apply for jobs. (Tr. pp. 42-43) Mr. Rosene set these up on Petitioner's cell phone. (Tr. p. 43) Mr. Rosene sent Petitioner a list of potential employers for Petitioner to contact, and Petitioner explained he would call these employers. *Id.* Petitioner stated he would also visit potential employers to apply. *Id.* Petitioner also attempted to find work by talking to his friends and family. (Tr. p. 44)

Petitioner testified he lived in Mill Shoals, Illinois, a town of about 300 people, for the last 17 years. (Tr. p. 45) Petitioner stated the nearest larger towns to his home were Mt. Vernon, Benton and Evansville with these cities being a 45, 45 and 60 minute one-way drive, respectively. (Tr. pp. 45-46) Petitioner testified he had difficulty at times finding potential employers because of where he lived. (Tr. p. 46) Petitioner testified he was unable to use a clutch all day long because his leg was not strong enough. *Id.* Petitioner testified he dropped out of high school in the 12th grade and did not receive a high school diploma. (Tr. pp. 46-47) Petitioner had not obtained any other licenses or certificates other than his CDL license (Tr. p. 47) Petitioner's work history since leaving high school had consisted of driving a truck (Tr. p. 48) In terms of technology skills, Petitioner could use his phone to use Google, to read emails, to obtain directions, to read the news and to use the Internet, but he could not perform any of these actions on a computer as his "wife done all that." (Tr. p. 50) Petitioner testified he did not know how to use Microsoft Word or Excel. (Tr. p. 51)

Petitioner stated Respondent never offered him any retraining/reeducation to make him more employable after his permanent restrictions were imposed (Tr. p. 51) Petitioner stated Respondent never offered him a job after he was released by Dr. Fehrenbacher in August 2023. *Id.* With respect to his cane, Petitioner stated he did not use his cane all of the time when inside his home because there were things he could hold on to. (Tr. p. 52) Petitioner stated he always uses his cane

if he goes outside of his home. *Id.* Petitioner stated using the cane makes him only able to carry things with one hand, (Tr. p. 53) Petitioner stated he ambulates slower now that he uses a cane, and Petitioner stated he primarily uses the cane because of poor balance. *Id.* Petitioner stated his imbalance issue is due to one of his legs now being shorter than the other. (Tr. 53-54). Petitioner estimated he could stand for 20 minutes before needing to sit, he could walk a block before needing to rest and he could sit for 2 hours at a time before he needed to stand. (Tr. pp. 54-55) Petitioner stated his knees and left hip prevent him from engaging in longer bouts of physical activity. (Tr. p. 57)

Petitioner testified that in 2024, he fell while trying to weed eat. (Tr. p. 58) Petitioner stated he had a strap on the weed eater that allowed him to operate the weed eater with one hand while his other hand was on the cane. (Tr. pp. 58-59) He stated he fell while attempting to use the weed eater and was hospitalized for four (4) days following this fall. (Tr. p. 59) Petitioner testified that he has not tried to weed eat his lawn since that fall and has his kids come over and handle this chore. *Id.* Petitioner testified that he did not have any problem walking, climbing stairs, moving about, or standing prior to the wreck. (Tr. p. 60).

On cross-examination, Petitioner acknowledged he still had a CDL license and had passed the DOT physical in 2024. (Tr. p. 62) Petitioner stated he intended to take the DOT physical again in April 2025 as he did not want to lose his CDL even though he did not think he could drive a semi. (Tr. p. 63) Petitioner testified all of his past driving employment was driving semi-tractor trailers. (Tr. p. 64) Petitioner agreed his only permanent restrictions were no climbing ladders and to use a cane when walking. (Tr. pp. 67-68) Respondent showed Petitioner a picture of a tractor used with semi-trailers, and Petitioner agreed it was similar to trucks he had operated in the past (Tr. p. 68 and RX 4). Petitioner was asked about the steps to get up into the truck in the following exchange:

Q. And there's just steps to get up into the truck, correct?

A. True.

Q. There's no ladders to get into the truck?

A. No. You had handles to grab hold of.

Q. Okay. Thank you.

A. Seems similar. (Tr. p. 69)

On cross-exam, Petitioner agreed he did not want to travel as far as he had in the past for work. (Tr. p. 71) Petitioner testified Mr. Rosene never told him not to pursue a bus driving job, and Petitioner stated he did not pursue that job because he did not have a passenger endorsement on his license. (Tr. pp. 71-72) Petitioner stated he completed job search logs while working with Mr. Rosene and gave those logs to Mr. Rosene (Tr. pp. 72-73) Petitioner agreed he and Mr. Rosene submitted applications to potential employers. (Tr. p. 73) Petitioner testified when he received a job lead from Mr. Rosene, he would contact the employer by phone and sometimes drive to the employer to discuss the potential job. (Tr. p. 74) Petitioner agreed he had hearing aids, glasses,

and dentures before the accident and that his hearing, eye, and dental care following the wreck was merely to replace his hearing aids, glasses, and dentures. (Tr. pp. 74-75) Petitioner stipulated he was not claiming permanent injury for hearing, vision, or dental issues. (Tr. p. 75) Petitioner agreed he had not seen any orthopedic doctor since seeing Dr. Fehrenbacher in August 2023. (Tr. pp. 75–76)

The Arbitrator asked Petitioner questions follow direct and cross-examination (Tr. p. 79) In response to these questions, Petitioner stated the first step into a semi-truck was at least three (3) feet high. *Id.* Petitioner stated he tried to climb into and out of the cab of a semi-truck following the wreck, but Petitioner did not think he could do it multiple times a day as he would be required. (Tr. 79-80) Petitioner stated he gave Mr. Rosene copies of the logs he made while reaching out to various employers, but Petitioner stated he did not keep a copy of himself. (Tr. p. 81)

Medical Treatment

Petitioner was transported from the scene via Air Evac Lifeteam to Deaconess Hospital. (PX 4 and PX 5) His emergent care records reflect bilateral lower extremity open deformities and gross hematuria with catheter placement. (PX 5 p. 9) In terms of initial imaging studies, left hip x-rays showed a “heavily comminuted” mildly displaced and mildly angulated distal femoral fracture, right femur x-rays showed a “severely comminuted” and displaced intraarticular fracture of the proximal tibia, pelvis x-rays showed a moderately angulated intertrochanteric fracture of the proximal left femur, a CT angiogram of the abdominal aorta and bilateral runoff showed multiple bilateral rib fractures, a likely traumatic injury to the mesentery, comminuted fracture involving the tibial plateaus on the right and a CT scan of the chest showed right fourth through sixth rib fractures and a suspected nondisplaced sternal fracture. (PX 5 pp. 19-20 and 63-66) In addition to the fractures, he was admitted into the hospital by Dr. Roberto Iglesias with diagnoses of kidney laceration with gross hematuria, acute blood loss anemia, stranding of the mesentery, bilateral kidney injury with possible arterial injury and dilated gonadal vein on the left. (PX 5 p. 16)

Petitioner remained hospitalized at Deaconess Hospital through August 4, 2022. (PX 5). In terms of the most significant orthopedic care he underwent while admitted, Dr. John Connor performed an incision and excisional debridement of bone, muscle, and skin from right open tibial plateau fracture and left open supracondylar femur fracture, external fixation of right bicondylar tibial plateau fracture with knee spanning fixator, external fixation of left open supracondylar femur fracture with knee spanning fixator and open reduction internal fixation of left intertrochanteric hip fracture with compression hip screw in July 20, 2022. (PX 5 pp. 29-30) Dr. Connor post-operative diagnoses were right grade 2 open bicondylar tibial plateau fracture, left grade 2 open supracondylar femur fracture and left displaced intertrochanteric hip fracture. (PX 5 p. 29-30). Dr. Connor also performed an irrigation of left grade 2 open supracondylar femur fracture and placement of a retrograde intramedullary nail in the left supracondylar femur on July 22, 2022. (PX 5 pp. 28-29) Dr. Conner’s post-operative diagnosis was Grade 2 open left supracondylar femur fracture. (PX 5 p. 28) A right knee CT scan on July 25, 2022, showed a heavily comminuted, intra-articular, displaced proximal tibial fracture. (PX. 5 p. 180) On July 29, 2022, Dr. Michael Chardack performed a percutaneous screw fixation to the right open tibial plateau and proximal tibia fracture, conversion of spanning external fixator to below the knee external fixator on the right and irrigation with debridement/removal of hematoma from the

anterior knee wound. (PX 5 p. 26) Dr. Chardack's post-operative diagnoses were right open tibia fracture and right anterior knee hematoma. (PX 5 p. 26)

While admitted, Petitioner also had a urology consult with Dr. David Moore on July 20, 2022, and it was noted he never had gross hematuria or difficulty with urination before the wreck (PX 5 pp. 45-46) Dr. Moore ultimately diagnosed trauma with gross hematuria and recommended ongoing catheterization and a cystoscopy once he could be seen in clinic. (PX 5 p. 49) While admitted, Petitioner had a telephone appointment with Miracle-Ear on August 2, 2022, to replace a hearing aid that was lost/damaged in the wreck. (PX 8 p. 3)

At the time of discharge, Petitioner was instructed to follow up with urology, prescribed Flomax and Eliquis, instructed to follow up with orthopedics and ordered to undergo therapy at a rehab facility. (PX 5 pp. 84-85) It was further noted Petitioner failed a void trial on August 2, 2022, and that the providers at the inpatient rehab facility would need to keep his catheter in place for several more weeks before trying another void attempt. (PX 5 p. 84)

Per his testimony, Petitioner was admitted into Encompass Rehab for care following his discharge from Deaconess Hospital, but no medical records from Encompass Rehab were admitted into evidence. (Tr. pp. 33-34) Based on billing records, Petitioner was discharged from Encompass Rehab on August 23, 2022. (PX 13 p. 34)

Petitioner was evaluated by Dr. Fehrenbacher on August 23 and September 13, 2022. (PX 6 pp. 28-34) Petitioner was ambulating via wheelchair, and Dr. Fehrenbacher ordered physical therapy on both dates. (PX 6 pp. 28-34) On September 13, 2022, Dr. Fehrenbacher allowed Petitioner to weight bear as tolerated on his left lower extremity, but he continued him as non-weight bearing on his right lower extremity while ordering a walker. (PX 6 p. 33)

Petitioner returned to Dr. Moore's office on September 8, 2022, for urology care. (PX 7 p. 8) Dr. Moore noted he still had an indwelling catheter that had not been changed and that he was taking Flomax daily. (PX 7 p. 8) Petitioner hoped Dr. Moore would remove the catheter at this appointment. (PX 7 p. 9) Dr. Moore noted Petitioner failed a voiding trial in his office. (PX 7 p. 12) Dr. Moore reviewed the records from the hospital and opined there was no bladder injury or significant renal laceration or arterial renal injury. *Id.* Dr. Moore instructed Petitioner how to self-catheterize and ordered a cystoscopy. *Id.* Dr. Moore diagnosed urinary retention and gross hematuria and continued to prescribe Flomax. *Id.*

When Dr. Fehrenbacher evaluated Petitioner on October 11, 2022, he was still ambulating via wheelchair. (PX 6, p. 36-40). Dr. Fehrenbacher opined his right tibial plateau fracture had healed enough to remove the external fixator, ordered physical therapy, and allowed Petitioner to bear weight as tolerated on his right lower extremity. (PX 6 pp. 38-39)

Dr. Moore performed the cystoscopy on October 11, 2022, at Deaconess Hospital. (PX 7, p. 18 - 19). Dr. Moore opined the cystoscopy showed mildly enlarged size prostate with moderate lateral lobe impingement on the urethra, a significantly distended bladder with heavy debris within the bladder that required significant irrigation to visualize and a high bladder neck. (PX 7, p. 19). Dr. Moore maintained his diagnoses and stated he wanted to wait for Petitioner to heal from his

orthopedic injuries to see if his retention issues would subside before potentially ordering urodynamics to evaluate for bladder outlet obstruction. (PX 7, p. 19 - 20).

On October 17, 2022 Dr. Fehrenbacher performed a removal of external fixator procedure at Deaconess Hospital. (PX 5 p. 327) His operative note indicates this was to address the bicondylar tibial plateau fracture with static external fixator and percutaneous screw fixation previously performed by Dr. Chardack. *Id.*

From November 1, 2022, through January 3, 2023, Petitioner had several appointments with Dr. Lauren Stone, DMD to replace his upper and lower dentures that were damaged in the wreck. (PX 9 pp. 1-2) On November 10, 2022, Petitioner had a hospital discharge follow-up with Ms. Angela Olson, CNP. (PX 10 pp. 3-10) CNP Olson noted his ambulatory issues and completed disability paperwork. *Id.*

Petitioner returned to Dr. Fehrenbacher on November 8, 2022, December 20, 2022, and February 7, 2023. (PX 6 pp. 42-54) On November 8, 2022, Petitioner was still ambulating via wheelchair, and Dr. Fehrenbacher ordered additional therapy. (PX 6 pp. 42-43) By December 20, 2022, Petitioner was ambulating with a walker, complaining of left hip pain, reporting that his right foot turned inward when relaxed and indicated one leg was shorter than the other. (PX 6 pp. 46-47) Dr. Fehrenbacher confirmed the left lower extremity has 2 cm shorter than the right on physical exam and ordered work conditioning. (PX 6 p. 47) As of February 2, 2023, Petitioner ambulated with a cane, and Dr. Fehrenbacher ordered additional therapy. (PX 6 pp. 52-53) Dr. Fehrenbacher also ordered a heel lift for “post traumatic limb length discrepancy.” (PX 6 p. 53)

Petitioner had a follow-up appointment with Dr. Moore on December 20, 2022. (PX 7 pp. 20 - 26). Dr. Moore noted unchanged symptoms and ordered a urodynamics study. *Id.* Dr. Moore stated his symptoms may be secondary to bladder outlet obstruction which would appear on urodynamics. (PX 7 p. 26) Dr. Moore also stated his injury could be a neurogenic bladder which would have to be managed lifelong with intermittent catheterization. *Id.*

Petitioner underwent the urodynamics study on February 14, 2023, at Deaconess Hospital, and it showed bladder outlet obstruction and incomplete bladder emptying. (PX 7 p. 27) Dr. Moore reviewed the study with Petitioner the same date and stated the study was concerning for bladder outlet obstruction related to his prostate and not neurogenic bladder. (PX 7 p. 35) Dr. Moore commented his injury and prolonged disability may have exacerbated the underlying outlet obstruction. *Id.* Dr. Moore prescribed Flomax and recommended a prostatic urethral lift surgery (a/k/a Urolift). *Id.* Dr. Moore performed the Urolift procedure on March 3, 2023, at Deaconess Hospital. (PX 7 pp. 37-38) Dr. Moore stated he was to have a void trial on March 6, 2023, and commented that if he continued to have urinary retention issues then the only remaining treatment option would be a Transurethral Incision of the Prostate (TUIP) vs Transurethral Resection of the Prostate (TURP) with wide resection of the bladder neck. (PX 7 p. 38)

Petitioner returned to Dr. Fehrenbacher’s office on March 6, 2023, and March 14, 2023, and due to aggravating symptoms, Dr. Fehrenbacher recommended surgery to remove surgical hardware from his right leg. (PX 6 pp. 58-63) On March 23, 2023, Petitioner presented to Deaconess Hospital for a scheduled surgery to remove right tibial plateau hardware, but during his anesthesia induction, Petitioner became bradycardic and pulseless for 10 seconds. (PX 5 pp. 332-

333) As a result, the procedure was cancelled and Petitioner was admitted through March 27, 2023, for cardiology evaluation, observation, and monitoring. *Id.* He was cleared by a cardiologist to undergo the surgery. (PX 5 p. 333) On March 30, 2023, Dr. Fehrenbacher performed a removal of deep implant from the medial proximal tibia on the right and a removal of deep implant from the lateral proximal tibia on the right. (PX 5 p. 425) Dr. Fehrenbacher's post-operative diagnosis was painful orthopedic hardware from the percutaneous cancellous screws. (PX 5 p. 427)

Petitioner was reevaluated by Dr. Moore on April 11, 2023, reporting little change in his symptoms since the Urolift surgery except he could urinate a little urine without catheterization and a more frequent sensation to urinate. (PX 7 p. 39) Dr. Moore recommended repeating a urodynamics study before proceeding with TUIP/TURP and prescribed Flomax. (PX 7 p. 45)

Petitioner had additional appointments with Dr. Fehrenbacher on April 11, 2023, May 23, 2023, and June 6, 2023. (PX 6 pp. 69-74) On April 11, 2023, Dr. Fehrenbacher noted Petitioner's ongoing symptoms and ordered more therapy. (PX 6 pp. 69-70) On May 23, 2023, Dr. Fehrenbacher charted complaints of hip pain and that a physical exam showed ambulation with cane, a Trendelenburg gait and tenderness over the posterior iliac crest and gluteal muscle proximally. (PX 5 p. 71) Dr. Fehrenbacher again referred our client for a heel lift and additional physical therapy on May 23, 2023. (PX 5 p. 72) On June 6, 2023, Dr. Fehrenbacher noted Petitioner was attempting to use a weed eater at home on May 24, 2023, lost his balance and fell onto his left lower extremity. (PX 5 p. 73) Dr. Fehrenbacher reviewed imaging studies on June 6, 2023, and opined there was no new fracture, and that Petitioner likely just sustained a hip contusion when he fell. (PX 5 p. 74)

Dr. Fehrenbacher last examined Petitioner on July 11, 2023. (PX 5 pp. 75-76) Dr. Fehrenbacher recorded Petitioner was nearly back to his status before he sustained the fall in May, 2023 and Petitioner took pain medication after his therapy appointments. (PX 5 p. 75) Left femur x-rays showed progression of fracture healing with his hardware intact and maintaining of alignment of fracture, and right knee x-rays showed maintained alignment of tibial plateau with progression of fracture healing. (PX 5 p. 76) Dr. Fehrenbacher prescribed additional therapy care and opined Petitioner would reach MMI in 4 weeks. *Id.* Dr. Fehrenbacher imposed permanent work restrictions on July 11, 2023, consisting of "allow use of cane" and "no climbing ladders." *Id.* Dr. Fehrenbacher stated Petitioner could return on an as needed basis. *Id.* On August 17, 2023, Dr. Fehrenbacher authored a note stating Petitioner had reached MMI and restated the permanent restrictions of "allow use of cane" and "no climbing ladders." (PX 5 p. 78) From September 26, 2022, through September 21, 2023, Petitioner completed seventy (70) physical therapy appointments at Fairfield Memorial Hospital. (See PX 11).

Petitioner obtained a second opinion concerning his bladder issues from Dr. Hing Lai at Washington University in St. Louis on December 14, 2023. (PX 12 p. 2-4) Dr. Lai noted he could urinate on his own at that time but would need to self-catheterize several times a day to completely empty his bladder. (PX 12 p. 2) Dr. Lai diagnosed "incomplete bladder empty," "elevated postvoid residual volume," "this happens after the car accident" and "failed Urolift." (PX 12 p. 4) Dr. Lai recommended urodynamics and a urine culture. *Id.*

The urine culture was performed on March 28, 2024. (PX 12 p. 13) Due to contamination, a urine culture was repeated on June 10, 2024, and urodynamics testing was performed the same

date. (PX 12 p. 23) Dr. Lai reviewed the urodynamics testing on June 13, 2024, and opined it showed a bladder outlet obstruction. (PX 12 p. 28) Dr. Lai recommended a cystoscopy on June 13, 2024. *Id.* Dr. Lai opined the June 13, 2024, cystoscopy showed an obstruction in the prostrate urethra. (PX 12 p. 30) Dr. Lai recommended a TURP procedure. *Id.* There is no further evidence in the record as to Petitioner's urology care.

Expert Deposition Testimony

The evidence deposition of Mr. Jeremy Rosene, a vocational consultant and the director of vocational services at Independent Rehabilitation Services, was taken on December 5, 2024. (PX 1 pp. 1-5) Mr. Rosene testified his current job duties included performing evaluations, providing job placement services, and completing labor market research. (PX 1 pp. 5-6) Mr. Rosene explained that he had a master's degree in rehabilitation counseling, was a certified rehabilitation counselor, a certified vocational evaluator, and a licensed clinical professional counselor. (PX 1 p. 7) Mr. Rosene testified that he geographically focuses his services on Southern Illinois. (PX 1 p. 9)

Mr. Rosene testified he first met Petitioner on February 16, 2024, and as part of that meeting, he conducted an initial vocational assessment that included review of medical records, restrictions imposed by treating physician, current medical status, education, and vocational history as well as an intake interview with the Petitioner. (PX 1 pp. 10-11). Mr. Rosene testified he was unaware of Respondent attempting to participate in any way concerning Petitioner's vocational assessment or rehabilitation efforts following Petitioner's request for the same in January 2024. (PX 1 p. 11) Mr. Rosene testified he created a report based on his initial meeting with Petitioner and concluded based on his review of all information and initial assessment that Petitioner could only perform sedentary work. (PX 1 pp. 11-16) Mr. Rosene opined Petitioner could not return to his usual and customary occupation as a truck driver because he was no longer able to work a medium physical demand level job, which is the level of a tractor-trailer truck driver, and because Petitioner was not capable of operating a clutch. (PX 1 pp. 16-17) Mr. Rosene opined Petitioner's employment opportunities would be limited to unskilled and entry level positions. (PX 1 p. 17)

Mr. Rosene testified after the initial assessment he provided Petitioner with vocational services, including creating a resume, setting up a dedicated email account and Indeed account for his employment search, monitoring his email/Indeed accounts to respond to potential employment opportunities, working on interview skills, meeting with Petitioner on a regular basis in person, having Petitioner make contact with potential employers, providing Petitioner with a list of local employers that he could contact in person and via telephone and applying for potential jobs on Petitioner's behalf. (PX 1 pp 18-20, 23) Mr. Rosene also created monthly reports that summarized actions by himself and Petitioner with respect to the search for employment. (PX 1 p. 20)

During his in-person meetings with Petitioner, Mr. Rosene would review job logs, make sure Petitioner was communicating with employers, make sure Petitioner was applying for jobs on his own and discuss anything relevant to Petitioner's job search (PX 1 p. 22) Mr. Rosene stated Petitioner was completing the job search process as best he could, noting that Petitioner was limited in his use of technology, and Petitioner was taking action if Mr. Rosene requested it. (PX 1 pp. 22-24) Mr. Rosene stated he would send a copy of his reports to Respondent's insurance adjuster, and no one ever expressed any displeasure or concern about the vocational process. (PX 1 p. 25)

Mr. Rosene acknowledged Petitioner passed his DOT physical while working with him to find employment, but Mr. Rosene stated this did not change his plan for Petitioner's job search as Petitioner could not operate a clutch for a manual transmission and they were already targeting driving jobs any way. (PX 1 p. 26) Mr. Rosene stated Petitioner was punctual for his meetings, a reliable person and responded to emails and phone calls timely. (PX 1 p. 30). Mr. Rosene testified he generally has his clients complete job logs. (PX 1 pp. 33-34) Mr. Rosene stated Petitioner generally completed his logs and completed logs to the fullest extent he was capable, but he also stated Petitioner would also often call him and tell Mr. Rosene about the contacts he had made instead of writing them down. (PX 1 p. 34)

Mr. Rosene stated Petitioner never got a job offer despite Petitioner and Mr. Rosene's efforts. (PX 1 p. 35) Mr. Rosene testified he thought Petitioner was motivated to go back to work and actively participated to find employment. (PX 1 p. 36) Mr. Rosene testified within a reasonable degree of vocational certainty, a viable and stable labor market did not exist for Petitioner. (PX 1 p. 37) When asked why he had this opinion, Mr. Rosene stated because we performed a diligent job search for about nine months and received no offers of employment despite Petitioner's active participation and because he had experienced an even further decline in his health with respect to urinary issues and a toe amputation since they began to search for work. (PX 1 p. 37) Mr. Rosene testified employers are generally less likely to hire persons of advanced age. (PX 1 p. 38) Mr. Rosene testified Southern Illinois also offers fewer employment opportunities for people in a rural area, like Mill Shoals. (PX 1 p. 39) Mr. Rosene testified Petitioner's three year gap of employment at this time was something that also adversely affected employment potential. (PX 1 pp. 40-41).

On cross-exam, Mr. Rosene stated Dr. Fehrenbacher did not put any limitations on Petitioner's ability to lift, stand, drive, ambulate or climb stairs. (PX 1 pp. 45-47) Mr. Rosene agreed Dr. Fehrenbacher did not state Petitioner was limited to sedentary physical demand level, but he added that his experience was doctors rarely define physical demand levels (PX 1 p. 47) Mr. Rosene agreed he concluded Petitioner was of the sedentary physical demand level based on his permanent restrictions from the treating doctor. *Id.* Mr. Rosene acknowledged following his initial evaluation of Petitioner he did not believe he could pass a DOT physical but also acknowledged he did not know in detail what a DOT physical consisted of. (PX 1 pp. 48-49) Mr. Rosene stated he discouraged Petitioner from pursuing any type of seasonal or part-time work (PX 1 p. 50) Mr. Rosene was questioned why he discouraged Petitioner from pursuing a part-time or seasonal bus driver position as documented in his second report, and Mr. Rosene responded that it was so early in the job search that he thought it would inhibit his ability to potentially find full time work as his obligations to this part-time or seasonal position would not allow him to apply as much or participate in interviews with other potential employers. (PX 1 pp. 50-51) Mr. Rosene stated Petitioner consistently completed job logs, and Mr. Rosene stated he in general kept those logs. (PX 1 p. 52) Mr. Rosene stated job logs were kept in his file and that when he received a subpoena in this case, he provided everything he had in his file. (PX 1 p. 52) Mr. Rosene agreed that on July 16, 2024, Petitioner received an offer for an interview also on July 16, 2024, with Napa Auto Parts, but when he spoke to Petitioner, Petitioner stated he was unable to make the appointment due to a prior obligation. (PX 1 pp. 56-57) Mr. Rosene agreed Petitioner was unaware of the request for an interview from Napa Auto Parts until Mr. Rosene informed him by telephone. (PX 1 p. 58) Mr. Rosene agreed part of the reason he reached the conclusion that no viable and

stable labor market existed for Petitioner was based on his determination that Petitioner's work capacity was in the sedentary physical demand level. (PX 1 pp. 59-60).

On redirect exam, Mr. Rosene stated that no one ever reached out from Respondent prior to his deposition to advise Petitioner or Mr. Rosene were performing an inadequate job search or inadequate vocational assistance. (PX 1 p. 61-62) Mr. Rosene stated to his knowledge Respondent did nothing to show interest in helping Petitioner find employment. (PX 1 p. 62)

Other Exhibits and Objections

Respondent entered Respondent Exhibit 1 into evidence which was a claim payment history.

Respondent also sought to admit Respondent's Exhibit 2 for impeachment purposes only (Arb. Ex. 4; RX 2). Respondent's Exhibit 2 is purportedly the documents Respondent received via subpoena from Mr. Rosene (Arbitrator's Exhibit 4 and RX 2). Petitioner raised a hearsay objection to pages 1 – 19 of Respondent's Exhibit 2. The arbitrator overrules the hearsay objection as this exhibit was offered only for impeachment purposes and not for the truth of the matter asserted. Respondent offered Respondent's Exhibit 2 to impeach testimony by Mr. Rosene and Petitioner that job search logs were completed by Petitioner as no job search logs were contained in the materials produced by Mr. Rosene in response to the subpoena.

CONCLUSIONS OF LAW

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

Circumstantial evidence, especially when entirely in favor of the Petitioner, is sufficient to prove 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).

There is ample evidence, circumstantial and otherwise, to indicate Petitioner's orthopedic injuries are causally related to the July 20, 2022, accident. Petitioner's testimony, Petitioner's care records and all other evidence supports Petitioner's orthopedic injuries are causally related to his accident. There is no evidence in the record to rebut that Petitioner's orthopedic injuries are causally related to his accident. For this reason, the Arbitrator concludes by a preponderance of the evidence Petitioner's orthopedic injuries are causally related to his July 20, 2022, accident.

As to Petitioner's urological injuries, the medical records support Petitioner had no symptoms affecting his ability to urinate before the July 20, 2022 accident, Petitioner had gross hematuria upon admission for emergent care immediately following the accident, Petitioner was catheterized, Petitioner developed the inability to urinate on his own volition following the accident and emergent catheterization, his inability to fully void urine persisted as of his final care records admitted into evidence and Dr. Moore commented that the trauma may have worsened his ability to urinate. Beyond the care records that support an acute injury that caused Petitioner's

inability to urinate without a catheter, all circumstantial evidence indicates Petitioner's urinary symptoms were caused by the accident, including the lack of any urinary issues prior to the wreck, the immediate inability to urinate after the wreck and the consistent inability to urinate without a catheter for the two years following the wreck as shown by medical records. This is a classic case of circumstantial evidence establishing a causal connection. As a result, the Arbitrator concludes by a preponderance of the evidence that Petitioner's urinary injuries are causally related to his July 20, 2022, 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?

In terms of charges Petitioner alleges are related to the accident and that Respondent either failed to pay or that were satisfied by an entity other than Respondent, Petitioner submitted a spreadsheet as follows:

Medical Provider	Date of Service	Charges	Paid by Respondent	Paid by Medicare	Paid by Cigna	Paid by Allstate	Paid by DentalWorks USA	Paid by Petitioner	Balance Due
Deaconess Hospital & Dr. David Moore	7/20 - 8/4/2022	\$1,971.00	\$893.00	\$248.13	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	7/22/2022	\$883.00	\$160.04	\$23.66	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	7/22/2022	\$49.00	\$0.00	\$6.29	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	7/29/2022	\$2,899.00	\$1,005.16	\$23.66	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	8/5 - 8/14/2022	\$1,734.00	\$791.07	\$199.86	\$37.49	\$0.00	\$0.00	\$0.00	\$0.00
	8/6 - 8/7/2022	\$422.00	\$0.00	\$105.78	\$26.98	\$0.00	\$0.00	\$0.00	\$0.00
	8/15 - 8/19/22	\$1,055.00	\$0.00	\$264.45	\$67.45	\$0.00	\$0.00	\$0.00	\$0.00
	8/20 - 8/21/2022	\$422.00	\$0.00	\$105.78	\$26.98	\$0.00	\$0.00	\$0.00	\$0.00
	8/22 - 8/23/2022	\$422.00	\$0.00	\$105.78	\$26.98	\$0.00	\$0.00	\$0.00	\$0.00
	8/25/2022	\$191.00	\$0.00	\$45.22	\$11.54	\$0.00	\$0.00	\$0.00	\$0.00
	9/8/2022	\$598.00	\$0.00	\$130.99	\$32.99	\$0.00	\$0.00	\$0.00	\$0.00
	10/11/2022	\$850.00	\$0.00	\$60.18	\$15.13	\$0.00	\$0.00	\$0.00	\$0.00
	11/17/2022	\$139.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$139.00
	12/20/2022	\$170.00	\$0.00	\$68.31	\$0.00	\$17.17	\$0.00	\$0.00	\$0.00
	12/28/2022	\$139.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$139.00
	2/7/2023	\$139.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$139.00
	2/14/2023	\$170.00	\$0.00	\$24.31	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	2/21/2023	\$489.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$107.40
	2/21/2023	\$49.00	\$0.00	\$6.24	\$1.55	\$0.00	\$0.00	\$0.00	\$0.00
	3/3/2023	\$18,166.00	\$0.00	\$253.84	\$0.00	\$63.28	\$0.00	\$0.00	\$0.00
	3/21/2023	\$139.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$139.00

	3/23 - 3/27/2023	\$27,723.96	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$27,663.96
	3/23/2023	\$49.00	\$0.00	\$6.24	\$0.00	\$1.55	\$0.00	\$0.00	\$0.00
	3/24/2023	\$802.00	\$0.00	\$230.42	\$0.00	\$58.47	\$0.00	\$0.00	\$0.00
	3/30/2023	\$460.00	\$0.00	\$48.01	\$0.00	\$11.97	\$0.00	\$0.00	\$0.00
	4/27/2023	\$248.00	\$0.00	\$80.45	\$0.00	\$20.52	\$0.00	\$0.00	\$0.00
	5/31/2023	\$468.00	\$0.00	\$129.42	\$0.00	\$33.02	\$0.00	\$0.00	\$0.00
	6/1/2023	\$1,246.00	\$0.00	\$301.90	\$0.00	\$76.99	\$0.00	\$0.00	\$0.00
Orthopaedic Associates	7/29/2022	\$1,350.24	\$559.44	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$790.80
	7/29/2022	\$1,030.00	\$489.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$540.75
	7/29/2022	\$1,800.00	\$454.86	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,345.14
	10/11/2022	\$91.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$91.00
	10/11/2022	\$84.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$84.00
	10/11/2022	\$925.00	\$467.50	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$457.50
	10/17/2022	\$561.00	\$532.95	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$28.05
	11/8/2022	\$84.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$84.00
	3/30/2023	\$1,600.00	\$957.96	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$642.04
	7/11/2023	\$84.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$84.00
	7/11/2023	\$91.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$91.00
	7/11/2023	\$109.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$109.00
Diamond Valley Dental	11/1/2022	\$4,208.00	\$0.00	\$0.00	\$0.00	\$0.00	\$98.00	\$0.00	\$4,110.00
CVS Pharmacy	11/8/2022	\$25.40	\$0.00	\$6.40	\$0.00	\$0.00	\$0.00	\$19.00	\$0.00
	12/7/2022	\$25.40	\$0.00	\$6.40	\$0.00	\$0.00	\$0.00	\$19.00	\$0.00
Angela Olson	11/10/2022	\$359.00	\$0.00	\$119.88	\$0.00	\$0.00	\$0.00	\$0.00	\$30.17
	11/10/2022	\$22.00	\$0.00	\$2.94	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Dr. H. Henry Lai/Wash U	12/14/2023	\$75.00	\$0.00	\$0.00	\$67.68	\$0.00	\$0.00	\$0.00	\$0.00
	12/14/2023	\$325.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	12/14/2023	\$20.00	\$0.00	\$0.00	\$14.31	\$0.00	\$0.00	\$0.00	\$0.00
	3/28/2024	\$180.00	\$0.00	\$0.00	\$8.83	\$0.00	\$0.00	\$0.00	\$0.00
	3/28/2024	\$20.00	\$0.00	\$0.00	\$17.88	\$0.00	\$0.00	\$0.00	\$0.00
	6/10/2024	\$1,180.00	\$0.00	\$90.87	\$23.13	\$0.00	\$0.00	\$0.00	\$133.46
	6/13/2024	\$660.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$17.92
	6/13/2024	\$845.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$38.47
	6/13/2024	\$1,180.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$50.15

	6/13/2024	\$670.00	\$0.00	\$181.16	\$46.11	\$0.00	\$0.00	\$0.00	\$0.00
	6/13/2024	\$165.00	\$0.00	\$69.72	\$0.00	\$0.00	\$0.00	\$0.00	\$17.75
	6/13/2024	\$20.00	\$0.00	\$3.41	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL		\$79,882.00	\$6,311.23	\$2,949.70	\$425.03	\$282.97	\$98.00	\$38.00	\$37,072.56

In light of the Arbitrator's findings above concerning causation between the accident and urologic injuries/care, Respondent shall satisfy all charges by Dr. Lai at Washington University as those charges were for reasonable, necessary, and causally related treatment to address Petitioner's urinary symptoms. Specifically, Respondent shall reimburse Medicare \$345.16 for its subrogation interest, shall reimburse Cigna \$177.94 for its subrogation interest, and shall satisfy the \$257.75 in outstanding charges, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these outstanding charges and subrogation interests that is reflected on the claim payment history exhibit.

In light of the Arbitrator's findings above concerning causation between the accident and urologic injuries/care, Respondent shall satisfy all charges by CVS pharmacy as those charges were for reasonable, necessary and causally related prescriptions by Dr. David Moore to address Petitioner's urology symptoms. Specifically, Respondent shall reimburse Medicare \$12.80 for its subrogation interest and shall reimburse Petitioner \$38.00 for his out-of-pocket expenses, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these out-of-pocket expenses and subrogation interest that is reflected on the claim payment history exhibit.

In light of the evidence that Petitioner saw Ms. Angela Olson on 11/10/22 for a post-hospital stay follow up from Deaconess Hospital, Respondent shall satisfy all charges by Ms. Angela Olson for the 11/10/22 date of service as those charges were for reasonable, necessary, and causally related treatment. Specifically, Respondent shall reimburse Medicare \$122.82 for its subrogation interest and satisfy the \$30.17 in outstanding charges, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these outstanding charges and subrogation interest that is reflected on the claim payment history exhibit.

In light of the Petitioner's testimony that his dentures were damage/lost as a result of the wreck, Respondent shall satisfy all charges by Diamond Valley dental as those charges were for reasonable, necessary, and causally related treatment to address replacement of Petitioner's dentures. Specifically, Respondent shall satisfy the \$4,110.00 in outstanding charges and shall reimburse DentalWorks USA \$98.00 for its subrogation interest, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these outstanding charges and subrogation interest that is reflected on the claim payment history exhibit.

In light of the Arbitrator's findings above concerning causation between the accident and orthopedic injuries/care, Respondent shall satisfy all charges by Orthopedic Associates as those charges were for reasonable, necessary, and causally related treatment to address Petitioner's orthopedic symptoms. Specifically, Respondent shall satisfy the \$4,347.08 in outstanding charges, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these outstanding charges that is reflected on the claim payment history exhibit.

With respect to charges by Dr. Moore and/or Deaconess Hospital, the Arbitrator finds there is insufficient evidence in the record to determine whether care provided on 11/17/22, 12/28/22, 2/21/23, 3/21/23, 4/27/23, 5/31/23 or 6/1/23 is reasonable, necessary, or causally related to the accident. There is no medical record, testimony or other evidence that allows the Court to conclude treatment on these dates was reasonable, necessary, or causally related to the accident. With respect to any other charges by Dr. Moore and/or Deaconess Hospital, Respondent shall satisfy those charges as those charges were for reasonable, necessary, and causally related treatment to address Petitioner's emergent care, hospital admissions, rehabilitation, orthopedic care and urology issues. Specifically, Respondent shall reimburse Medicare \$1,950.91 for its subrogation interest, shall reimburse Cigna \$245.54 for its subrogation interest, shall reimburse Allstate \$152.44 for its subrogation interest, and satisfy the \$27,802.96 in outstanding charges, as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these outstanding charges and subrogation interest that is reflected on the claim payment history exhibit.

In summary, Respondent shall pay directly to Petitioner \$36,547.96 in outstanding charges, \$2,431.69 for Medicare's subrogation interest, \$423.48 for Cigna's subrogation interest, \$152.44 for Allstate's subrogation interest, \$98.00 for DentalWorks USA's subrogation interest and \$38.00 for Petitioner's out-of-pocket medical expenses for reasonable and necessary medical services as provided in Sections 8(a) and 8.2 of the Act. Respondent is entitled to a credit for any payment made to address these outstanding charges, subrogation interest or out-of-pocket expenses that is reflected on the claim payment history exhibit.

ISSUE K: What maintenance benefits are due, if any?

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. 820 ILCS 305/8(a). Since maintenance is awarded incidental to vocational rehabilitation, an employer is obligated to pay maintenance only "while a claimant is engaged in a prescribed vocational-rehabilitation program." *Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 124 N.E.2d, 1027, 1033 (2nd Dist. 2019).

As discussed hereinbelow, Petitioner was entitled to vocational rehabilitation from at least August 18, 2023, through November 26, 2024, as Petitioner was unable to resume the regular duties in which he was engaged at the time of his injury for more 365 days prior to August 18, 2023, and he conducted a self-directed job search from August 18, 2023 through February 15, 2023 and continued his diligent job search with the assistance of vocational services from Mr. Jeremy Rosene from February 16, 2024, through November 26, 2024.

Respondent's claim payment history exhibit reflects Respondent has paid \$66,714.29 for maintenance benefits due from August 18, 2023, through November 26, 2024, and thus, Respondent is entitled to a credit for the same.

As a result, Respondent shall pay Petitioner maintenance benefits of \$1,000.00/week for 66-5/7ths weeks, commencing August 18, 2023, through November 26, 2024, as provided in Section 8(a) of the Act. Respondent shall be given a credit of \$66,714.29 for maintenance benefits it has paid.

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

Petitioner seeks an “odd-lot” permanent total disability award under 820 ILCS 305/8(f). For the reasons that follow, Petitioner has proven by a preponderance of the evidence that he is entitled to an “odd-lot” permanent total disability award under 820 ILCS 305/8(f). The Illinois Supreme Court elaborated on when an employee qualifies for an “odd-lot” permanent total disability award under 820 ILCS 305/8(f) in the case of *Ceco Corp. v. Industrial Commission*, 95 Ill.2d 278, 447 N.E.2d 842 (1983) where it stated as follows:

This court has frequently held that an employee is totally and permanently disabled when he “is unable to make some contribution to the work force sufficient to justify the payment of wages.” (E.g., *Gates Division, Harris-Intertype Corp. v. Industrial Com.* (1980), 78 Ill.2d 264, 268, 35 Ill.Dec. 780, 399 N.E.2d 1308; *Arcole Midwest Corp. v. Industrial Com.* (1980), 81 Ill.2d 11, 15, 39 Ill.Dec. 776, 405 N.E.2d 755.) The claimant need not, however, be reduced to total physical incapacity before a permanent total disability award may be granted. (*Interlake, Inc. v. Industrial Com.* (1981), 86 Ill.2d 168, 176, 56 Ill.Dec. 23, 427 N.E.2d 103; *Inland Robbins Construction Co. v. Industrial Com.* (1980), 78 Ill.2d 271, 275, 35 Ill.Dec. 778, 399 N.E.2d 1306.) Rather, a person is totally disabled when he is incapable of performing services except those for which there is no reasonably stable market. (*A.M.T.C. of Illinois, Inc. v. Industrial Com.* (1979), 77 Ill.2d 482, 487, 34 Ill.Dec. 132, 397 N.E.2d 804.) Conversely, an employee is not entitled to total and permanent disability compensation if he is qualified for and capable of obtaining gainful employment without serious risk to his health or life. (*E.R. Moore Co. v. Industrial Com.* (1978), 71 Ill.2d 353, 362, 17 Ill.Dec. 207, 376 N.E.2d 206.) In determining a claimant's employment potential, his age, training, education, and experiences should be taken into account. *A.M.T.C. of Illinois, Inc. v. Industrial Com.* (1979), 77 Ill.2d 482, 489, 34 Ill.Dec. 132, 397 N.E.2d 804; *E.R. Moore Co. v. Industrial Com.* (1978), 71 Ill.2d 353, 362, 17 Ill.Dec. 207, 376 N.E.2d 206.

In considering the propriety of a permanent and total disability award, this Court recently stated:

“Under A.M.T.C., if the claimant's disability is limited in nature so that he is not obviously unemployable, or if there is no medical evidence to support a claim of total disability, the burden is upon the claimant to establish the unavailability of employment to a person in his circumstances. However, once the employee has initially established that he falls in what has been termed the ‘odd-lot’ category (one who, though not altogether incapacitated for work, is so handicapped that he will not be employed regularly in any well-known branch of the labor market (2 A. Larson, *Workmen's Compensation* sec. 57.51, at 10-164.24 (1980))), then the burden shifts to the employer to show that some kind of suitable work is regularly and

continuously available to the claimant (2 A. Larson, Workmen's Compensation sec. 57.61, at 10-164.97 (1980)).” (Emphasis added.) *Valley Mould & Iron Co. v. Industrial Com.* (1981), 84 Ill.2d 538, 546-47, 50 Ill.Dec. 710, 419 N.E.2d 1159; *Interlake, Inc. v. Industrial Com.* (1981), 86 Ill.2d 168, 177, 56 Ill.Dec. 23, 427 N.E.2d 103.

Ceco Corp. v. Indus. Comm'n, 95 Ill. 2d 278, 286–87, 447 N.E.2d 842, 845–46 (1983).

The Appellate Court continued the discussion regarding the burden of proof in “odd-lot” permanent total disability cases in *Courier v. Industrial Commission*, 282 Ill.App.3d 1 (5th Dist. 1996). After summarizing the rules relating to permanent total disability, the court stated:

A number of cases which discuss the odd-lot category of PTD use the term “*prima facie*.” These cases state that once a claimant makes a *prima facie* showing that he fits into odd lot, the burden shifts to the employer to produce evidence that some type of regular and continuous employment is available to the claimant. By using the term *prima facie*, this rule appears at first glance to require that the claimant must merely make a *prima facie* case, *i.e.*, produce sufficient evidence so that a finding in that party's favor could be supported if contrary evidence were ignored. However, after careful review of the language of *Valley Mould & Iron Co. v. Industrial Comm'n*, 84 Ill.2d 538, 546-47, 50 Ill.Dec. 710, 714, 419 N.E.2d 1159, 1163 (1981), quoted in the *Ceco Corp.* decision, we find that the claimant must do more than make a *prima facie* case. In light of *Valley Mould*, the claimant has the burden to initially “establish” that she falls into the odd-lot category, before the burden of proof shifts to the employer to show availability of work. By using the word “establish,” *Valley Mould* requires that the claimant make more than a *prima facie* case. The claimant must prove by a preponderance of the evidence that she falls into the odd-lot category. See *Meadows v. Industrial Comm'n*, 262 Ill.App.3d 650, 653-54, 199 Ill.Dec. 937, 939-40, 634 N.E.2d 1291, 1293-94 (1994) (holding that “claimant has the burden of *proving* that he fits into the ‘odd lot’ category of section 8(f) of the Act” (emphasis added)). Whether the claimant has successfully met his burden is a question of fact for the Commission to determine *City of Green Rock v. Industrial Comm'n*, 255 Ill.App.3d 895, 902, 192 Ill.Dec. 955, 959-60, 625 N.E.2d 1110, 1114-15 (1993). We believe that the cases which use the term *prima facie* when discussing odd lot, use that term to mean “initially.” See *Meadows*, 262 Ill.App.3d at 653-54, 199 Ill.Dec. at 939-40, 634 N.E.2d at 1293-94. In other words, those cases hold that the claimant must “initially” establish, by a preponderance of the evidence, that she falls into the odd-lot category, before the burden shifts to the employer to show availability of work. See *Old Ben Coal Co. v. Industrial Comm'n*, 261 Ill.App.3d 812, 814, 199 Ill.Dec. 446, 448, 634 N.E.2d 285, 287 (1994).

Courier v. Indus. Comm'n, 282 Ill. App. 3d 1, 6–7 (5th Dist. 1996)

In *ABB C-E Services v. Industrial Comm'n*, 316 Ill. App. 3d 745 (5th Dist. 2000), the Appellate Court further discussed the burdens of proof and ways a Petitioner can establish an odd-lot permanent and total disability when it held as follows:

If employees fail to make out a prima facie case that they fall into the "odd-lot" category, then it remains incumbent upon them to demonstrate that, given their present condition and in light of their age, training, experience, and education, they are permanently and totally disabled. See *Valley Mould*, 84 Ill. 2d at 547, 419 N.E.2d at 1163. They may accomplish this by a showing of diligent but unsuccessful attempts to find work or by proof that because of the above-mentioned qualities they are unfit to perform any but the most menial tasks for which no stable market exists. See *c.*, 84 Ill. 2d at 547, 419 N.E.2d 1163. Thus, pursuant to the analytical framework set forth in *Valley Mould*, there are three ways by which employees can demonstrate that they are permanently and totally disabled: by a preponderance of the medical evidence, by showing a diligent but unsuccessful job search, or by demonstrating that because of their age, training, education, experience, and condition, no jobs are available to a person in their circumstances. *ABB C-E Services v. Industrial Comm'n*, 316 Ill. App. 3d 745, 749-50 (5th Dist. 2000).

The Arbitrator further takes note of the holdings in *Ameritech Services, Inc. v. Illinois Workers' Comp. Comm'n*, 389 Ill.App.3d 191 (1st Dist. 2009), and *David Dripps v. Super Mix and Rock Solid Stabilization*, No. 18 I.W.C.C. 0287 (May 7, 2018).

In *Ameritech Services, Inc.*, an executive injured his low back. *Ameritech Services, Inc. v. Illinois Workers' Comp. Comm'n*, 389 Ill. App. 3d at 193. The recommendation for a spinal fusion was declined by the petitioner. *Id.* at 199. Although the employee testified as to significant low back pain, while convalescing he was able to obtain an M.B.A. from Northwestern University. *Id.* at 200-201. The employee's vocational counselor opined that the employee was permanently and totally disabled from the labor market survey based upon his medical restrictions. *Id.* at 201. The Court held that the burden shifted to Ameritech to show that some kind of suitable work was regularly and continuously available to the employee, which Ameritech failed to do. *Id.* at 205-206. The Court relied upon, in part, respondent's failure to comply with 50 Ill. Adm. Code 7110.10 (which has now been recodified as 50 Ill. Adm. Cod 9110.10) in finding petitioner to be permanently and totally disabled. *Id.* at 207. The court further held that an employee satisfies his burden of establishing that employment is unavailable to him by presenting evidence of a diligent, but unsuccessful job search or by showing that he is not regularly employed in a well-known branch of the labor market. *Id.* at 204.

In *Dripps*, the petitioner was determined to have performed a diligent but unsuccessful job search. He completed a job search that consisted of applying to 5 potential jobs online and 5 jobs in person each week. He would meet with the respondent's vocational expert every other week to review his job applications. The petitioner in *Dripps* had only worked in one industry his entire career which was felt to limit the petitioner's ability to find work in different fields. *David Dripps v. Super Mix and Rock Solid Stabilization*, No. 18 I.W.C.C. 0287 (May 7, 2018)

The Arbitrator finds and concludes Petitioner has established by a preponderance of the evidence that he is permanently and totally disabled under an odd-lot theory by showing he performed a diligent but unsuccessful job search and by demonstrating that because of his age, training, education, experience, and condition, no jobs are available to a person in his circumstances.

By way of testimony, Petitioner established and there is no evidence to rebut that Petitioner searched for employment unsuccessfully on his own after being placed at MMI up until he began working with Mr. Rosene. Even after working with Mr. Rosene, a licensed vocational rehabilitation counselor, for an additional nine (9) months, Petitioner was still unable to secure employment despite performing a diligent job search. Mr. Rosene testified, and his monthly reports bear out that Petitioner performed a diligent yet unsuccessful job search. Mr. Rosene ultimately testified that no stable labor market existed for Petitioner. Mr. Rosene's testimony and reports indicate his opinion concerning a stable labor market for Petitioner were based on Petitioner's age, training, education, experience, and condition. Importantly, Respondent did not offer evidence to rebut Mr. Rosene's testimony or reports and only attempted to undermine the veracity of Mr. Rosene's opinions. The Court in *Ameritech Services, Inc.* found a vocational rehabilitation counselor's opinion that no stable labor market existed for a Petitioner was sufficient to shift the burden to Respondent. When you couple Mr. Rosene's opinions that no stable labor exists for Petitioner with the un rebutted fact that Petitioner performed a diligent but unsuccessful job search for approximately fifteen (15) with and without professional assistance, Petitioner established he is permanently and totally disabled under two of three possible ways discussed in *Valley Mould*.

Respondent attempts to undermine the diligence of Petitioner's job search and Mr. Rosene's testimony/vocational efforts by asserting Petitioner could return to his former occupation as a truck driver, Petitioner was not deemed to be only able to perform sedentary work by any physician, Mr. Rosene did not provide any job search logs in response to a subpoena, Petitioner did not participate in interviews with certain potential employers and Petitioner's perceived limitations hindered his search for employment.

The Arbitrator concludes Petitioner is unable to return to his former occupation as a semi-tractor driver because his permanent restrictions prevent him from climbing a ladder and the actions necessary to climb into and out of the cab of any normal sized semi-tractor is tantamount to climbing a ladder. Petitioner's testimony about the height of the first step to the cab, Respondent's own exhibit and common knowledge dictate that Petitioner would essentially have to climb up and down a ladder multiple times a day to get in and out of a tractor trailer. Common knowledge requires the Court to find that climbing into and out of the cab of any normal sized semi-tractor is not similar to climbing stairs because a person does not traverse three (3) feet in height between two steps. Whether Petitioner could pass a DOT physical is not relevant as to whether Petitioner was physically limited from climbing a ladder into a cab, and Dr. Fehrenbacher's permanent restrictions were un rebutted.

The Arbitrator is unaware of, and Respondent has not offered any authority that a licensed vocational rehabilitation counselor is prevented from assessing an individual physical demand capabilities for vocational purposes based on the undisputed medical evidence. 820 ILCS 305/8(a) indicates Mr. Rosene is appropriately qualified to "render opinions relating

to vocational rehabilitation.” The Arbitrator finds that the issue of what job opportunities Petitioner’s is qualified to perform based on his physical condition, age, training, education, and experience would include whether Petitioner is capable of performing sedentary, light, medium or heavy duty work.

Respondent suggests that Mr. Rosene’s failure to produce job search logs in response to subpoena indicates such logs were not completed or that Petitioner and Mr. Rosene’s credibility should therefore be questioned. The Arbitrator acknowledges that this is one possibility. Another possible explanation is that Mr. Rosene simply erred by failing to include those logs in response to the subpoena. The Arbitrator finds that Mr. Rosene’s failure to produce logs does not undermine all the other significant corroborating evidence concerning Petitioner’s job search efforts, including, the creation of a resume, the creation of a cover letter, the creation of an Indeed account, the creation of a email account specifically for finding employment, the bi-weekly meetings, the monthly reports, the request by potential employers for interviews, the applications Mr. Rosene submitted on Petitioner’s behalf, the list of potential employers Petitioner was to contact in each monthly report and the sharing of reports with Respondent on a monthly basis as to efforts taken by Petitioner and Mr. Rosene to find employment. In short, the Arbitrator is not persuaded by Respondent’s argument concerning job logs, especially when many inferences can be drawn from the failure to produce them and when Petitioner was providing Respondent with a monthly outline to challenge that Petitioner was diligently applying for work.

The Arbitrator is not persuaded that Petitioner failed to diligently participate in interviews with potential employers. Mr. Rosene explained via his reports and testimony that both potential employers seeking an interview sought to interview Petitioner on the same date of first contacting Petitioner. The Arbitrator finds it credible that Petitioner was not available for these interviews or the travel they required on short notice, and the evidence indicates Petitioner actively attempted to reschedule both of these interviews without success. The Arbitrator is similarly not persuaded by Respondent’s argument that Petitioner’s perceived limitations hindered his search for employment. Even if Petitioner’s perceived restrictions that were not supported by a physician were on Petitioner’s mind during his job search, there is a lack of evidence that his perceptions somehow materially undermined his diligent job search.

The Arbitrator here also finds it material, similar to the Court in *Ameritech Services, Inc.*, that Respondent failed to comply with its obligations under 50 Ill. Adm. Cod 9110.10(a) despite Petitioner’s direct attempt to obtain such vocational assistance. Other than maintenance checks, Respondent took no effort to aid Petitioner’s job search or vocational efforts. At trial, Respondent was more than willing to criticize Petitioner’s job search efforts even though Petitioner offered to involve Respondent in his vocational efforts and provided monthly updates on how efforts were progressing. Despite its contention that Petitioner could operate a tractor-trailer, Respondent never attempted to offer Petitioner his job back after he had reached MMI. Respondent’s choice to abrogate its responsibility in Petitioner’s vocational efforts and job search is contrary to its regulatory obligations and not in the spirit of what is required by 50 Ill.Admin.Code 9110.10(a) as discussed below.

Finally, Respondent offered no evidence to rebut or satisfy its burden once Petitioner shifted the burden by establishing a *prima facie* case that he was permanently and totally disabled.

For the aforesaid reasons, the Arbitrator finds and concludes Petitioner has established by a preponderance of the evidence that he is permanently and totally disabled under an odd-lot theory.

ISSUE O: Other – What vocational benefits are due? Is Respondent entitled to a credit?

The Illinois Appellate Court recently discussed when a Petitioner is entitled to vocational rehabilitation benefits and stated as follows:

"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." [citation omitted]. Because the primary goal of rehabilitation is to return the injured employee to work (citation omitted) if the injured employee has sufficient skills to obtain employment without further training or education, that factor weighs against an award of vocational rehabilitation. [citation omitted] Moreover, an injured employee is generally not entitled to vocational rehabilitation if the evidence shows that he does not intend to return to work, although able to do so. [citation omitted]. Vocational rehabilitation may include, but is not limited to, counseling for job searches, supervising job search programs, and vocational retraining, which includes education at an accredited learning institution. See 820 ILCS 305/8(a). An employee's self-directed job search or vocational training may constitute a vocational-rehabilitative program. {citation omitted}.

Euclid Bev. v. Ill. Workers' Comp. Comm'n, 124 N.E.2d at 1033-34 (2nd Dist. 2019).

50 Ill.Admin.Code 9110.10(a) states as follows:

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.

Thus, the Commission rule requires the employer to provide rehabilitation only if "appropriate." *Euclid Bev. v. Ill. Workers' Comp. Comm'n*, 124 N.E.2d at 1034 (2nd Dist. 2019).

As discussed above, the Arbitrator finds that Petitioner was unable to resume the regular duties in which he was engaged at the time of his injury because of the restrictions imposed by Dr. Fehrenbacher and based on the opinions by Mr. Rosene. Petitioner also clearly sustained a period

of incapacity for work exceeding 365 days, and this can be established by Respondent's stipulation that temporary total disability benefits were due for an uninterrupted 56-17ths weeks. As Petitioner was unable to resume his regular duties in which he or she was engaged at the time of injury for more than 365 uninterrupted days, vocational rehabilitation benefits were appropriate on or before August 17, 2023.

As Petitioner was entitled to vocational rehabilitation benefits on or before August 17, 2023, Petitioner's request for such vocational benefits was ignored by Respondent and Petitioner incurred the costs of hiring his own licensed vocational rehabilitation counselor to help him perform a diligent job search, Respondent shall reimburse Petitioner the \$7,550.98 he expended on Mr. Rosene's services.

Respondent is entitled to any credit as provided under Section 5(b) of the Act and as further explained in *Zuber v. Illinois Power Co.*, 135 Ill. 2d 407 (1990).

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC024310
Case Name	Trent Jackson v. Williams Nationalease
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0049
Number of Pages of Decision	15
Decision Issued By	Frank Soto, Commissioner

Petitioner Attorney	Kevin Elder
Respondent Attorney	Michael Baggot

DATE FILED: 2/23/2026

/s/Frank Soto, Commissioner

Signature

24WC024310

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 Choose reason	☐ Second Injury Fund (§8(e)18)
☐ Modify Choose direction	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TRENT JACKSON,

Petitioner,

vs.

NO: 24WC024310

WILLIAMS NATIONALEASE,

Respondent.

DECISION AND OPINION ON REVIEW

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

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 15, 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.

24WC024310

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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 \$33,100.00. 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.

February 23, 2026

O: 2/18/26

FJS/afr

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	24WC024310
Case Name	Trent Jackson v. Williams Nationalease
Consolidated Cases	
Proceeding Type	19(b) Petition
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	12
Decision Issued By	Paul Cellini, Arbitrator

Petitioner Attorney	Kevin Elder
Respondent Attorney	Michael Baggot

DATE FILED: 7/15/2025

/s/ Paul Cellini, Arbitrator

Signature**INTEREST RATE WEEK OF JULY 15 2025 4.13%**

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)/8(a)

TRENT JACKSON

Employee/Petitioner

v.

WILLIAMS NATIONALEASE

Employer/Respondent

Case # **24** WC **24310**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Paul Cellini**, Arbitrator of the Commission, in the city of **Kankakee**, on **April 30, 2025**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ 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 12, 2024**, Respondent *was* operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned **\$67,083.12**; the average weekly wage was **\$1,290.06**.

On the date of accident, Petitioner was **26** years of age, *single* with **2** dependent children.

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

Respondent shall be given a credit of **\$3,189.28** for TTD, **\$N/A** for TPD, **\$N/A** for maintenance, and **\$N/A** for other benefits.

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

ORDER

The Petitioner has shown by the preponderance of the evidence that he sustained accidental injury arising out of and in the course of his employment with Respondent on July 12, 2024.

The Petitioner has shown by the preponderance of the evidence that his right shoulder condition of ill-being is causally related to the July 12, 2024 accident.

Respondent shall pay Petitioner temporary total disability benefits of \$860.04 per week for 38 terminated weeks, commencing August 8, 2024 through April 30, 2025, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of \$3,189.28 for temporary total disability benefits that have been paid.

Respondent shall pay reasonable and necessary medical services of \$3,502.00, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall be given a credit for any awarded medical expenses that were paid by Respondent prior to the hearing date, 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.

Petitioner is entitled to the prospective arthroscopic right shoulder surgery proposed by Dr. Keller.

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

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

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



JULY 15 2025

 Signature of Arbitrator

STATEMENT OF FACTS

Petitioner began working for Respondent as a truck driver delivering foods to restaurants and facilities on 11/27/23. His trailers were pre-loaded, and he would use a cart or pallet jack to unload at customer locations. Petitioner earned \$26.00 per hour working full time, and he would have to complete his daily routes even if it involved overtime. He testified he was terminated in October 2024 for not returning to work while his treating physician was holding him off work. He is right hand dominant.

During a 7/12/24 delivery at a Veteran's Administration (VA) facility in Manteno, Illinois, Petitioner testified the threshold was not properly secured in the doorway between the building and dock and the pallet jack got caught while unloading. When it got hit, he went forward, "slinging" his right arm backwards. This resulted in aching pain throughout his arm, and immediate shooting pain from the shoulder into the arm. He felt difficulty flexing. Petitioner testified that the pallet jack got stuck because the threshold was raised and not secure. Petitioner had never delivered to this VA facility before.

Petitioner identified two photos in Rx5 as the dock plate and the two doors he went through into a hallway to drop off his deliveries. In the foreground is the dock plate. (p. 21) P. 20 depicts what the pallet jack caught onto in a view from inside the facility out. The plate threshold is where the pallet jack got stuck. Starting at approximately 10:30 a.m., he testified he delivered eight full loads and that the jack got stuck as he was exiting the building with an empty jack after the 6th load.

Petitioner testified a tall, heavy-set, balding man was present, who may have had painted fingernails and may have been wearing an apron. He didn't know if he worked for the VA or not, but "acted as if he did", and he was vaping. When he jerked his arm, he kind of yelled, and the man asked if he was okay. Petitioner advised he'd be fine and finished the delivery, testifying the man helped him with the last loads. The delivery took about an hour.

A younger lady was also on the dock while he was there, but not the whole time. There was another guy delivering with a van who she was talking to. She was who signed off on his invoice when he completed his delivery. He did not advise her of the injury incident. Petitioner testified Respondent instructed him to contact

their supervisor, not anyone at the customer facility. Petitioner testified the younger lady was also helping an older lady, who also appeared to work there, and they went into a different room in the hallway.

Petitioner called his supervisor when he went back to his truck and reported how he got hurt, and he was advised to return to the Springfield shop to complete an accident report. He agreed he declined medical treatment, and a completed “Workers’ Compensation Refusal of Medical Treatment” (Rx2) document states: “when pulling pallet jack got hung on door way and my body [continued] to move forward and it hiper stinded [sic] my upper arm.” It is signed by Petitioner and Respondent Driver Manager, John Halsey. A second page contains a pain diagram, which references aching in the right shoulder to the elbow, and states “my bicep, tricep, shoulder is aching when I flex my muscle it hurts.” (Rx2). Petitioner agreed he completed and signed Rx3.

Documentation which purports to be Respondent’s 7/12/24 invoice to the VA was signed by Amber Hanson. (Rx4). Entry Date is 6/24/24, Invoice Date is 7/12/24, and under “Special Instructions” it notes “Delivery week of July 8th” with no other real identifying information. The invoicing party is listed as MJ Kellner. There is no clear documentation of the number of pallets delivered. Six item entries were circled, two marked as not being delivered, and the other four as being damaged on delivery.

A Form 45 was also prepared by Petitioner. This document, dated 7/12/24, states that at about 10:45 a.m.: “I was making a delivery with pallet jack” and “I was pulling pallet jack and it caught the doorway.” He reported a right upper arm strain and that when he pulls on something its tender. He reported the injury occurred with the getting hung on the fleshhold [sic] and my body went forward.” (Rx3).

The injury happened on a Friday. Petitioner testified he was off for the weekend and had worsening shoulder and arm pain. He spoke to Halsey on Monday, reporting his worsening pain and desire to see a doctor, and he was referred to occupational health in Springfield on 7/15/23. The HSHS Medical Group report from 7/15/24 notes a history of a 7/12/24 injury: he “stated pulling a loaded jack on 7/12/24. Pt stated pallet got stuck as the pallet slowed down and he was still moving /walking faster pulled right shoulder back and stated there was no pain no cracking or popping out of socket he stated just pain.” He denied any prior right shoulder injuries and indicated his symptoms had improved since the injury with 3/10 level pain over the shoulder and 2/10 pain over the bicep. Overhead reaching and lifting over 20 pounds was causing discomfort. Dr. Briggs’ diagnoses were right rotator cuff capsule and biceps strains. He was restricted to no overhead lifting, ramp delivery, or lifting over 10 pounds with the right arm, and advised to follow up in 10 days. (Px3).

Respondent offered Petitioner light duty, initially cleaning the Bloomington shop with a rag and bucket and pick up trash in the lot. After a couple weeks he noticed right shoulder inflammation and reported this to “Brian.” While on light duty he was paid \$16.00, and Respondent never offered to pay him a wage differential. He testified Halsey knew he lived in Jacksonville.

At a 7/25/24 follow up, Petitioner reported persistent symptoms, now 5/10 and 3/10 level over the shoulder and bicep respectively. Restrictions were continued and physical therapy was ordered pending one month follow up. Petitioner returned on 8/5/24 with increased shoulder pain (8/10) after 3 sessions of therapy, reporting he got a Toradol injection at urgent care that week, which helped for three days. He was advised to follow up with orthopedic surgery with ongoing restrictions. (Px3).

Petitioner saw orthopedic surgeon Dr. Keller’s assistant on 8/7/24, David Freeman (CIOS Orthopedic Surgery and Sports Medicine) with complaints of right shoulder pain. Freeman documented he was pulling a pallet jack behind him with his right arm on 7/12/24 when it got stuck in a narrow doorway, pulling his arm back. The pain was mainly anterior, at times radiating into his right arm. There was tenderness to palpation at the interior joint

line over the bicep tendon on exam. Range of motion and rotator cuff strength were normal but there were positive exam findings (weakness and positive speed, apprehension, and O'Brien's tests). A right shoulder subluxation was diagnosed along with a SLAP tear/injury, biceps tendinopathy, and right shoulder impingement. X-ray revealed slight AC joint narrowing and a type two acromion. Physical therapy and home exercise were recommended, and Petitioner was held off work. An 8/20/24 MRI arthrogram showed no partial or full thickness rotator cuff tears and no significant tendon degenerative changes, unremarkable AC joint, suspicion of subtle SLAP lesion, although prominent sub labral recess could not entirely be excluded. A tiny sub labral cleft was noted at the posterior inferior labrum and clinical correlation was advised. (Px2).

On 8/22/24, Petitioner returned to PA Freeman with complaints of 8/10 level pain. He was doing his exercises but didn't like taking pain medication. In reviewing the MRI, Freeman noted evidence of a superior labral tear from approximately the 2:00 to 10:00 position, increased signal changes at the bicipital labral junction with flattening and widening, and increased fluid in the bicipital groove. No indication of rotator cuff disruption was noted. Surgery to repair the SLAP tear was recommended and the Petitioner wanted to proceed. In what appears to be a typo and should indicate the right instead of left shoulder, Petitioner was restricted from using the shoulder. (Px2).

On 9/11/24, Petitioner reported continued 7/10 right shoulder pain and that he was off work. Workers' compensation reportedly denied his claim and would not authorize surgery. Petitioner was given a cortisone injection, was to continue therapy, and was to follow up with Dr. Keller. On 10/1/24, the Petitioner saw Dr. Keller with complaints of no change with pain ranging from 6/10 to 8/10. Dr. Keller noted anterior biceps tenderness, mildly positive impingement sign, and positive SLAP. However, there was no rotator cuff weakness and O'Brien's test was negative. Noting failure of conservative treatment, Dr. Keller planned to schedule surgery and Petitioner was to remain off work and continue his home exercise program. On 10/15/24, Petitioner reported 50% relief with the injection but ongoing significant pain that prevented him from working, though he believed he could return to light duty. He was released with restrictions of no heavy lifting, pushing, or pulling with the right arm. At the last visit of 10/19/24, Dr. Keller noted the MRI showed a small labral tear, continued the work restrictions, and prescribed naproxen. Surgery was planned when Respondent authorized it. (Px2).

Petitioner testified he wants the surgery, but Medicaid wouldn't authorize the surgery given his claimed work injury. He denied any prior right shoulder injuries or any new injuries since 7/12/24. He denied any prior workers' compensation claims where he had retained a lawyer. His right shoulder remains very inflamed, and he has trouble sleeping due to pain. He hasn't worked anywhere since 8/7/24.

On cross examination, Petitioner denied receiving any instructions for making deliveries at the VA facility. He reiterated he delivered eight pallets on 7/12/24. The dock plate at the VA raises up in order to go inside the trailer. The VA was his second stop that day. He believed there were two truck docks. There was no one at the dock when he arrived. The younger lady he saw – who he described as short, blonde, maybe in her 40's – was talking to the van driver, who he believed was Hispanic, off to the side of the building at ground level (See Rx5, p. 21). Viewing p. 22 in Rx5 as a view from inside the facility through the double doors to the dock area, he agreed there was only one truck dock. No one else was on the dock when he started unloading.

Reviewing the photographs in Rx5, Petitioner reiterated the incident occurred at the threshold of the door. The Arbitrator notes there appears to be a split metal plate in the doorway area. (Rx5).

Petitioner identified Rx4 as copies of the invoices he provided to the blonde lady. He did not know her name, and she didn't sign them at that time. They walked together and she showed him where to place the deliveries in the hallway. He began to unload, and the lady was not standing there with him, she had returned to the van area. Petitioner believed the vaping man was present for his second load in. Petitioner testified they had no

conversation at that point. The younger lady was helping the older lady where he dropped the food. She talked to Petitioner to check on him, and then the two ladies both went into a separate room. The van was gone by the time he came out for the 4th pallet, and the vaping man was still present. When he was moving the 5th pallet the two ladies walked past him, made sure everything was alright and then went through another door.

The vaping man was present when Petitioner was bringing in the 6th pallet, the ladies were not. He was going back through the door with the empty jack when it stuck at the threshold and pulled his right arm back. The corner of the fork by the front wheel is what got caught, not the wheel itself. The handle, used to crank the forks up and down, was at a mid-level. He couldn't recall if the pallet jack came from the truck or from the VA facility. He felt immediate sharp, sore right shoulder pain, probably about a 3/10. He yelled out something like "aw shit." He believed the vaping man was standing in the doorway, off to the side, and asked if he was okay. Petitioner testified the man told him the threshold had been like that multiple times before. He continued to unload but couldn't get the pallet over the dock plate because of his arm, so the man started helping so he could finish the delivery. They both held onto the handle and pulled it for pallets 7 and 8. It was hard to get over the plate, so he asked the guy for help. The blonde lady then showed up with his signed invoices. He didn't tell her he had been hurt.

Petitioner was able to drive to the Springfield shop after the injury despite the pain and used his left arm. He didn't recall calling anyone else at that time. Petitioner acknowledged his handwriting and signature in Rx2 and Rx3.

After initially testifying that he didn't do anything over the weekend after the work accident, he acknowledged he did go hiking in the Shawnee National Park and stayed there for the weekend with a friend at an Airbnb. He walked trails and used a light backpack. He did document the trip on his social media page. His shoulder remained sore that weekend, pain at a 3 to 4/10 level.

Petitioner testified he did not recall when he first talked to Respondent's Brain Rolfs, but they likely had multiple conversations. He told him what happened and who witnessed the accident. Rolfs assigned Petitioner with the light duty work. It initially was a couple days in Springfield before he was moved to Bloomington. As to why, Petitioner testified that Rolfs said there was no one to watch him there. It was not because of any change on his work restrictions. Once he moved to the Bloomington location, he and Rolfs had pretty much daily conversations about what happened.

Petitioner's last medical visit was in November 2024, he hasn't worked anywhere since being terminated by Respondent, and he is not receiving any disability benefits. He denied that the blonde woman went through the invoices to confirm what was delivered. The circled items on the invoice (Rx4, p. 10) indicates items that are missing. Petitioner didn't believe he had any conversation with the blonde woman about the circled items. As to the circling and handwriting in #14, Petitioner did not write any of it. He noted a circling can also mean an item was returned by the customer. If he circled it, above or below would indicate which of the two it is, but he doesn't believe he made these circles.

Amber Hanson, the Manteno VA storekeeper who manages warehouse deliveries, was subpoenaed to testify at the hearing. Her office is right near the dock, and when she hears a truck come in, she goes out to receive the delivery. She meets them when they back in, takes any invoices, then verifies what is being brought in. She has a substitute when she is out of the office, but she testified she was present at the VA on 7/12/24 and recognized Petitioner based off his height and it being the first time she had seen him for a delivery. She showed him where to deliver the products. She provided a manual pallet jack. She told him she would be there, and she signed paperwork as he brought it to her. He unloaded two to three pallets. No one else was delivering at that time and his truck was the only vehicle in the dock area. She denied that there was a van delivery at that time. Ms.

Hanson testified she was in the dock area the entire time Petitioner was making deliveries and watched the deliveries – “I was signing paperwork as he brought it to me.” She also denied that any other VA employee was on the dock during this time, including anyone vaping or any older lady. She saw no accident involving Petitioner, never heard him yell out, and he never reported any incident to her. She didn’t really recall any conversation with Petitioner that day. Had he reported being injured, they would have completed an incident report with security staff and notified her supervisor about what happened. This would have been done immediately to determine if it could be resolved without involving anyone else, and this did not occur with Petitioner on 7/12/24. She ultimately did prepare a report, Rx6, on 8/9/24, after she was notified by security staff that “they had received something.”

Rx6 is the VA Incident Report (dated 8/9/24) notes it is regarding an MJ Kellner Delivery Driver and was completed by Ms. Hanson. It states: “Unsure of the exact date/time of the incident of where the MJ Kellner Driver stated he was hurt. I vaguely remember him, but he never said anything to me that he got hurt on the door transition in question. I was following him while he was pulling the pallet jack out of the double doors to which he looked down and didn’t say anything to me at that moment.” (Rx6).

Ms. Hanson acknowledged she signed off on the Petitioner’s invoices (Rx4). The document includes the “checks and balances” of making sure everything ordered was received. The drivers for this Respondent would provide the invoices on the delivery day, and she would sign off and keep her carbon copy, returning the originals to the driver. She makes sure everything invoiced is on the pallet, and then does a double check once the driver leaves. She did not recognize the handwriting circles and markings in Rx4 and denied making these herself. She also identified the photos in Rx5 as accurate and explained the points of view.

On cross-examination, Ms. Hanson testified there are other employees in the dock area and that the kitchen is nearby. There would be a cook there, but no one matching who the Petitioner described. She denied there was any “older” lady working at the VA facility. She again confirmed there was no van delivery that day, as Petitioner had the only delivery. He arrived mid-morning. She could not recall what he was wearing that day. She recalled how many times Petitioner came in and out that day because there is usually one delivery per day, usually around that time. Again, she vaguely remembered Petitioner because that was the first time she saw him. Generally, Respondent’s deliveries had only 2 to 3 pallets, and she again stated that she had her eye on the Petitioner the entire time he was there. Ms. Hanson testified that no one else was on the dock that day, whether vaping/smoking or not, but also testified “I would not have been on the dock at that time because I was watching him doing delivering the pallets inside.” Smokers/vapers would be further down the dock area. Ms. Hanson first learned about Petitioner’s claimed injury when the VA security personnel came to her indicating they received something. She didn’t know what they received but she then completed her report (Rx6). She didn’t recall any specific conversation with Petitioner. His delivery took about an hour. She testified that Petitioner should have told her he was injured while he was there, but she didn’t know why she believed that he should have.

Respondent also called Brian Rolfs, the safety and compliance manager, to testify. His job includes accident and injury investigations, and he reviews and investigates all Illinois-based work injuries. In this case, Petitioner was injured while Mr. Rolfs was on vacation. After reviewing the accident documentation completed by Petitioner when he returned on 7/16/24, he contacted Petitioner to discuss the accident. They reviewed the accident paperwork, and he asked additional clarification questions. Petitioner advised him that he was bringing the pallet jack through the VA doorway and caught it on the edge of the door frame. That same day, he contacted Mr. Halsey to see whether photos had been taken of the area, which there weren’t, and Mr. Rolfs was provided with the photos in Rx5 at a later time.

He contacted the Manteno VA numerous times but was only able to speak to the correct department twice, the first time being on or about 7/26/24, when he spoke to “Shanice”, the head of the department. He explained his concerns about an injury at a doorway and asked if the VA was aware of the incident. Shanice verified the VA was not aware of any injuries on their property in the time frame he asked about, noting there would have been a mandatory report, and the requirement for Respondent to notify them of injury before departing the site. Respondent contracts with a company called MJ Kellner to perform their deliveries, and the majority of Kellner’s contracts with customers indicate the customer is to be notified of any property damage or injuries before leaving the site. This requirement is covered with all new hires at orientation, and it is reinforced with other conversations or meetings.

After Petitioner returned to light duty, starting in Springfield, Mr. Rolfs had additional conversations with him, testifying Petitioner initially was unable to provide any specific info regarding an onsite witness. Originally the restrictions allowed him to work for Respondent on modified routes without physical unloading, but he then was moved to Bloomington-Normal on or about 7/29/24, which was Rolfs’ home location, and they started having lengthier conversations at that point. As they discussed the incident further, Petitioner provided additional details which conflicted with his prior statements. For example, he initially could not describe the witness on the VA dock who saw him yell out when he was injured. He couldn’t say if it was a man or woman or provide any other identifying characteristics. Mr. Rolfs asked for more information so he was aware of the VA department he needed to communicate with, and at that time Petitioner described a tall man with earrings, nails painted, and with feminine characteristics who saw him almost falling backwards when he got jerked pulling the pallet through the doorway. Mr. Rolfs reached out to the VA on 8/8/24, when he spoke to Shanice, and she said there was no person who fit the Petitioner’s description working at the VA around 7/12/24. Shanice also stated that the shopkeeper, who they didn’t name, would be there and was required to be there for deliveries at all times. The procedure was to check in the product. With open doors and people of various cognitive conditions, they had to make sure that all areas were secured at all times for both resident and vendor safety. Mr. Rolfs further testified that Petitioner initially told him on 7/16/24 that the pallet was caught on the edge of the door frame, but when they talked further in Bloomington, he said the pallet got caught in the sill plate on the floor. Mr. Rolfs then contacted Mr. Halsey immediately, and Halsey advised that he was advised of the incident after Petitioner had already left the VA. Shanice took notes to report to her supervisor, Tanya, who was on vacation. Mr. Rolfs then followed up with Tanya on approximately 8/22/24. He obtained a verbal report and requested a written report from Tanya. Rx6 was not provided to him. The only other investigation he did was to follow up with the VA in terms of discrepancies and conflicting information. On cross, Mr. Rolfs agreed that Petitioner did report a 7/12/24 incident to Halsey that same day and waived treatment at that time. The also agreed the reports from 7/12/24 are consistent.

Petitioner’s treating surgeon, Dr. Keller, was deposed by the parties on 2/6/25. The history provided by Petitioner was of a right shoulder injury that occurred as a result of pulling a pallet jack that got stuck in a narrow doorway and pulled his right arm. Exam indicated a positive O’Brien’s test, supportive of a SLAP tear or labral tear. The MRI arthrogram showed an abnormality consistent with an anterior labral tear. The doctor diagnosed a right shoulder anterior labral tear that had not improved with conservative care and recommended arthroscopic surgery involving a SLAP repair versus debridement. On 8/22/24 he was restricted to no left shoulder use and surgery was planned for stabilization of the SLAP tear. A 9/11/24 injection provided about 50% relief for a week. On 10/1/24, Dr. Keller held Petitioner off work. On 10/1/24, Petitioner felt like he could perform light duty and was released with no heavy lifting, pushing, or pulling with the right arm. Petitioner last saw Dr. Keller on 11/19/24, and he continued to recommend surgery at that time. His work status was updated to a 10 pound restriction, as well as the prior restrictions, pending surgery. Dr. Keller testified: “I do think there’s a definite causal relationship. The accident was consistent with a history that could cause a labral tear.” On cross, the doctor agreed he didn’t review any of Petitioner’s records from prior to his initial visit on 8/7/24. He acknowledged his causation opinion was based on an accurate history of accident from Petitioner. He agreed

that the radiologist noted the defect could be an anatomic variant, but “in my mind there’s clearly a tear”, and Petitioner had clinical findings of a SLAP tear. Dr. Keller did not believe that Petitioner’s tear would have occurred without an acute injury. (Px1).

Respondent obtained a records review with orthopedic surgeon Dr. Balaram. Dr. Balaram noted a discrepancy as to whether the accident actually happened based on the VA accident report, as well as “an email dated 8/8/24 an employee indicates that no such incident of a pallet jack getting stuck on a door happened.” He also opined that Petitioner refusing initial medical care would be inconsistent with an acute traumatic injury. When asked about causal connection he stated that if the accident occurred and caused the labral tear, then such trauma would have been noticed by people nearby and immediate treatment would be expected. Dr. Balaram did concede that Petitioner has a subtle slap lesion which could require surgery if conservative treatment failed. (Rx1)

CONCLUSIONS OF LAW

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

The Arbitrator finds that the Petitioner sustained accidental injury which arose out of and in the course of his employment with Respondent.

Respondent’s dispute regarding accident is not so much a legal challenge as much as whether the Petitioner sustained injury which arose out of and in the course of his employment based on his reporting and testimony, but rather whether the accident even occurred as Petitioner claims and the Petitioner’s credibility.

The Petitioner testified he was pulling an unloaded pallet jack through the double doors from the VA dock to delivery area when the jack got caught in the floor plate, resulting essentially of a jerking of his right arm and injury to his shoulder. Respondent argues that the devil is in the details. Respondent argues Petitioner provided inconsistent accounts of the exact mechanism of injury. At the initial occupational health visit, the history states Petitioner was pulling a loaded pallet jack, which he testified that the pallet jack was unloaded when he was injured.

The Arbitrator notes that the Petitioner’s testimony is consistent with the documentation of injury (Rx2 & 3) he provided to Respondent on 7/12/24. This is particularly important in the Arbitrator’s view as this is the most contemporaneous written documentation of the incident. The Arbitrator notes the injury occurred on a Friday and it was reported the same day. This is a different situation than if the Petitioner had initially reported the injury on the following Monday, for example. There are differing accounts of Petitioner’s injury happening due to catching on the floor plate, catching on the door frame, and getting caught in a narrow doorway. However, the initial Form 45 completed on the accident date states, at least from the Arbitrator’s perspective, what appears to be “threshold” which Petitioner may have spelled “flesh Hold.” This is similar to his indicating in the medical refusal that he “hiper stinded” his shoulder, which appears to mean hyperextended. Thus, the most contemporaneous documentation of injury is consistent with the pallet jack getting stuck on the door threshold.

There are factual issues of inconsistency here, no question. The Petitioner testified he delivered about 8 pallets to the VA. Ms. Hanson testified that he delivered 2 to 3, which is consistently what Respondent would deliver to the VA. There was no way for the arbitrator to tell simply by looking at the invoice how many pallets there might have been. Petitioner described a tall, balding man that may have had painted fingernails as being present on the dock and ultimately assisting him with the pallet jack for his last couple of pallets. Ms. Hanson denied

that anyone else was present at the dock area on the accident date, including anyone with a delivery van as the Petitioner described. Ms. Hanson indicated she had eyes on the Petitioner throughout his delivery, while Petitioner testified she was not present at times during his delivery. Ms. Hanson and the Petitioner described an approximate one hour delivery, which seems relatively long to deliver 2 or 3 pallets. Ms. Hanson was also asked a question on cross that led her to answer that she was busy inside reviewing the delivered pallets and wasn't necessarily paying attention to the dock, which makes it questionable as to how she could have had eyes on the Petitioner or the dock at all times. While Ms. Hanson testified that no one of the tall balding man's description worked in the kitchen, she also testified that the kitchen was not part of her area of supervision.

It was indicated that the Petitioner had been informed as part of his training that injuries were to be reported prior to leaving the customer facility, which he did not do. He called after returning to the truck per his testimony. Mr. Rolfs testified that this did not happen. Petitioner testified he contacted his supervisor when he got back to his truck. As Mr. Halsey did not testify, it is unclear whether there is evidence to support when exactly the call took place. Mr. Rolfs was out of town at the time. No evidence was presented as to whether Mr. Halsey took any steps in regard to investigating this matter while Mr. Rolfs was out of town, or whether he instructed Petitioner to report the injury to the VA by either remaining at or returning to the VA.

The accuracy of Ms. Hanson's testimony seems a little more unclear to the Arbitrator since there was nothing to cause her to give particular attention to the 7/12/24 date when she had no knowledge of the incident alleged that day until over a month later when she was asked to prepare a report. That being said, again, the Petitioner's accuracy is questionable in terms of the likelihood Hanson would have recalled another employee or dock bystander helping Petitioner to move the pallet jack, which was Petitioner's testimony.

The Arbitrator also notes that the testimony regarding what "Shanice", the tall balding man, or Mr. Halsey may have said at any point in time is hearsay.

The fact that there are conflicting facts in this case between Petitioner and Ms. Hanson and Petitioner and Mr. Rolfs makes this a difficult case to determine all of the relevant facts. What sways the Arbitrator in this case is that the Petitioner had already reported the accident on the actual accident date, consistent with his testimony, and the described mechanism of injury both seems plausible given the job duties and seems to be a competent mechanism of injury to the shoulder. This has greater relevancy when there is no evidence that Petitioner had any right shoulder problems prior to 7/12/24. Respondent's questioning of this matter and the related facts was reasonable, but the Arbitrator believes Petitioner's prompt reporting of the injury and consistency with his testimony sufficiently supported his burden of proof by the preponderance of the evidence.

As to the legal issues regarding "accident", taking Petitioner's testimony as true, he was clearly in the course of his employment with Respondent when he was injured pulling the pallet jack. This activity of pulling a pallet jack in the Arbitrator's view also clearly increased his risk of a shoulder injury, and this was an employment-related risk.

The Arbitrator finds the greater weight of the evidence supports that the Petitioner sustained accidental injury to his right shoulder which arose out of and in the course of his employment with Respondent on 7/12/24.

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

The Arbitrator finds that the Petitioner's right shoulder injury is causally related to the 7/12/24 accident. There is no evidence the Petitioner had any prior right shoulder condition or problems. His job involved significantly heavy use of the right upper extremity to deliver food products. He reported the injury on the same day it

occurred, according to his testimony. The mechanism of injury of his arm going forward in pulling a pallet jack when it suddenly got stuck makes logical sense in terms of there being a pulling in his shoulder at that time. By the chain of events, the Petitioner has shown by a preponderance of the evidence that his right shoulder condition is causally related to the accident. It should be noted that Dr. Keller also opined that the injury is related to Petitioner's described accident, and that the mechanism was of the type that could have caused the diagnosed labral tear.

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:

Petitioner presented his outstanding medical expenses as Px5. These charges total \$3,502.00 as follows: 1) Ft. Jesse Imaging - \$2,195.00; and 2) Dr. Keller - \$1,307.00.

While Petitioner also seeks payment for a subrogation notice from Illinois DHFS, this is denied. The document indicates a \$100.74 payment for a 12/26/24 service of Memorial Physician Services. The evidentiary record does not document any 12/26/24 medical visit, and Dr. Keller testified he last saw Petitioner in November 2024.

The Arbitrator finds that the Respondent is liable for the medical charges totaling \$3,502.00 pursuant to Sections 8(a) and 8.2 (Medical Fee Schedule) of the Act. Respondent is entitled to credit for all awarded amounts that may have been paid by Respondent prior to the hearing, so long as Respondent holds the Petitioner harmless with regard to the credited expenses.

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

Petitioner is entitled to the surgical procedure for the right elbow as recommended by Dr. Keller. Dr. Keller prescribed the surgery as needed based on a clinical diagnosis of a SLAP/labral tear, objective MRI arthrogram support for this diagnosis, and Petitioner's failure to improve with conservative treatment. Dr. Balaram basically agreed that surgery would be reasonable if conservative treatment failed. Respondent shall authorize the recommended surgery SLAP / labral tear repair or debridement.

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:

Petitioner was injured on 7/12/24. His initial work restrictions were placed on him on 7/15/24 and Respondent accommodated the restrictions until 8/7/24, when Dr. Keller's office took Petitioner off work completely. Petitioner testified he has not worked anywhere since 8/7/24. As of 11/19/24, the last time that Petitioner saw Dr. Keller, his restrictions were to lift no more than ten pounds and to avoid heavy pushing/pulling. There is no evidence that Respondent subsequently accommodated the restriction, and Petitioner's testimony that he was fired by Respondent in October 2024 for missing work while being held off work is un rebutted. The Arbitrator finds that Petitioner is entitled to TTD benefits from 8/8/24 through the hearing date, 4/30/25.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006924
Case Name	Peter Hopp v. Metropolitan Water Reclamation of Greater Chicago
Consolidated Cases	
Proceeding Type	Petition for Review under 19(b)
Decision Type	Commission Decision
Commission Decision Number	26IWCC0050
Number of Pages of Decision	20
Decision Issued By	Carolyn Doherty, Commissioner

Petitioner Attorney	Matthew Gannon
Respondent Attorney	Michael Chalcraft II

DATE FILED: 2/23/2026

/s/ Carolyn Doherty, Commissioner

Signature

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.

February 23, 2026

O: 02/18/26

CMD/kcb

045

/s/ Carolyn M. Doherty

Carolyn M. Doherty

/s/ Raychel A. Wesley

Raychel A. Wesley

/s/ Christopher A. Harris

Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	19WC006924
Case Name	Peter Hopp v. Metropolitan Water Reclamation of Greater Chicago
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	17
Decision Issued By	William McLaughlin, Arbitrator

Petitioner Attorney	Matthew Gannon
Respondent Attorney	Michael Chalcraft II

DATE FILED: 8/14/2025

/s/William McLaughlin, Arbitrator

Signature

INTEREST RATE WEEK OF AUGUST 12, 3.97%

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**

Peter Hopp
 Employee/Petitioner

Case # **19** WC **006924**

v.

Consolidated cases: _____

Metropolitan Water Reclamation District of Greater Chicago
 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 McLaughlin**, Arbitrator of the Commission, in the city of **Chicago**, on **June 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. ☒ 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 14, 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 **\$106,080.00**; the average weekly wage was **\$2,040.00**.

On the date of accident, Petitioner was **50** years of age, *single* with **0** dependent children.

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

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

Respondent **is not** entitled to a credit.

ORDER

The Arbitrator finds that Petitioner's current condition is casually related to his July 14, 2018, accident.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$2,433.00 to Petitioner as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner temporary total disability benefits of \$1,360.00/week for 116 5/7 weeks, commencing March 16, 2023 through June 10, 2025, as provided in Section 8(b) of the Act.

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

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



Signature of Arbitrator

AUGUST 14, 2025

IN THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

PETER HOPP,	)	
	)	
Petitioner,	)	
v.	)	NO. 19WC006924
	)	
METROPOLITAN WATER	)	
RECLAMMATION DISTRICT OF GREATER	)	
CHICAGO,	)	
	)	
Respondent.	)	

PROCEDURAL HISTORY

This issue was previously tried on January 28, 2022. The Arbitrator rendered a decision finding that Petitioner's July 14, 2018 work accident arose out of and was in the course of Petitioner's employment with Respondent. The Arbitrator's decision was subsequently affirmed by the Commission on September 12, 2022. The Commission found that Petitioner's accident, and his resulting lumbar radiculopathy, arose out of and occurred during the course of his employment. (RX. 2, pgs. 6, 36). Respondent was deemed liable for Petitioner's unpaid medical bills pursuant to the fee schedule and 56 and 5/7 weeks of unpaid TTD benefits. (PX. 13).

Findings of Fact

Arbitrator adopts the testimony and findings from the January 28, 2022, hearing from July 14, 2018,

To summarize Petitioner sustained serious injury while stepping down a temporary set of stairs at work. As he descended, he stepped on a piece of equipment and fell. As a result of the fall the Petitioner underwent two surgeries, one for his shoulder and one for his lower back. (Tr. pg. 8).

Medical Treatment

Right Shoulder Treatment

After his July 14th, 2012, injury Petitioner was treated by Dr. Steven Chudik. After an MRI of Petitioners shoulder, which revealed multiple tears, DR. Chudik instructed Petitioner to remain off work while he underwent conservative treatment. (PX 3, pgs. 9,17).

After conservative treatment failed to correct the Petitioners condition, Dr. Chudik ultimately recommended surgery. (Tr. 1/28/22, pg. 24-25) (PX 3, pg. 49). Petitioner was again instructed to remain off work. (PX. 3, pg. 51).

On September 27, 2018, Dr. Chudik performed a right arthroscopy with excessive debridement, a right capsular release of Petitioners superior glenohumeral ligament, a subacromial decompression, a rotator cuff repair with an anchor, and a right bicep tenodesis with screws and an anchor. Petitioner's tear in his right shoulder articular surface was ICRS grade 2/3a, meaning it was about a 50% articular surface tear. (PX,3, pgs. 90-93)

On October 1, 2018, after Petitioner's shoulder surgery, he attended a course of physical therapy. (Tr.1/28/22, pg. 26) (PX. 3, pg. 97).

By January of 2019, Petitioner's shoulder was making progress. (PX.3, pgs. 130-131). Petitioner's swelling was subsiding, and his range of motion was increasing, but Dr. Chudik remained to keep Petitioner off of work noting Petitioner still lacked adequate range of motion and strength for his job. (PX. 3, pgs. 131, 133). While Petitioner was in therapy, he attended an e-learning course in February of 2019 through his employer in attempt to go back to work in a light duty capacity. (Tr. 1/28/22, pgs. 26-27).

On January 30, 2019, Petitioner underwent a functional capacity evaluation at Athletico. (PX. 3, pg. 136). At the FCE, it was noted that Petitioner still had back pain, which was a constant soreness in Petitioner's lower back. Petitioner was still waiting on approval from Respondent's carrier to receive treatment for his back. (PX.3, pgs. 137, 139).

On April 25, 2019, Petitioner went to therapy. Petitioner's therapists noted that he needed some more therapy before beginning work conditioning. (PX. 3, pgs. 159, 175). Petitioner's therapists noted that he was still waiting on authorization for treatment of his lumbar spine and this gave Petitioner's therapists pause in transitioning to weightlifting activities, which had not yet begun for Petitioner. Petitioner was again instructed to remain off work. (PX. 3, pgs. 159, 176). By May of 2019, Petitioner's shoulder was at MMI, so he followed up for treatment on his lower back. (Tr. 1/28/22, pg. 27).

B. Lumbar Spine Treatment

Petitioner's lower back treatment did not start until September of 2019, because Petitioner's treating physicians instructed him to complete treatment of this right shoulder prior to treating for his lumbar spine injury. (Tr. 1/28/22, pg. 25).

Because Petitioner was suffering from immense pain, Petitioner paid for his back treatment while waiting for the Respondent's approval. (Transcript 1/28/22, pg. 29).

During his treatment in September 2019, Petitioner was treating with. Dr. Lawrence Frank, a board-certified physical medicine and rehabilitation specialist. (PX. 8, pg. 1-6). Dr. Lawrence Frank's opinion was that Petitioner specifically suffered a low back injury on July 14, 2018. And that a fall such as the one that occurred here could cause an asymptomatic back to become symptomatic. (PX. 8, pgs. 13- 15). Dr. Frank noted that Petitioner had back and leg pain bilaterally, left foot drop, and a limited ability to walk. (Tr. 1/28/22, pg. 30). Dr. Frank ordered an MRI and an EMG and ordered Petitioner to remain off work for the next four weeks. (Tr. 1/28/22, pgs. 31-32) (PX 8, pg. 22). He diagnosed Petitioner with lumbar radiculopathy. (PX. 8, pg. 22).

On October 24, 2019, after a review of an MRI, Dr. Frank reviewed and recommended a the MRI which he later performed. (PX 8, pgs. 23-24) (Tr. 1/28/22, pg. 31).

On January 11, 2020 Dr. Frank noted that although Petitioner was doing better in December following his injections, the pain returned in January and was getting worse. (PX. 5, pgs. 8-12) (PX. 8, pg. 24). On January 16, 2020, Dr. Frank performed a second epidural steroid injection on Petitioner's lumbar spine at L5. (PX. 5, pg. 34). Dr. Frank then referred Petitioner to Dr. O'Leary and Dr. Walcott, neurosurgeons. (Tr. 1/28/22, pg. 32).

On February 13, 2020, Dr. O'Leary recommended that Petitioner undergo an EMG to try to better isolate the source of the pain and also undergo a CT of his lumbar spine to look at the old surgical implants and plan for a decompression surgery. (PX. 4, pg. 47). The CT scan was

performed on February 19, 2020 and revealed disc bulges in L2-3, L3-4, L4-5, and L5-S1. (PX. 4, pgs. 39-40).

On March 4, 2020, Dr. O'Leary recommended a Lamin foraminotomy, which was not approved by Respondent's carrier. On July 7, 2021, because Dr. O'Leary no longer performed surgery at Northwest Community Hospital, he referred Petitioner to Dr. Brian Walcott for further care of Petitioner's low back. (PX.4, pgs. 7-8, 32).

On August 10, 2021 Dr. Walcott performed a lumbar laminectomy. (Tr. 1/28/22, pg. 33) (PX. 4, pgs. 227-28).

After the lumbar laminectomy, Petitioner attended therapy to the date of the Arbitration hearing on January 8, 2022. (Tr. 1/28/22, pg. 33). Petitioner was off work from August 10, 2021, to the date of the Arbitration, January 28, 2022. (Tr. 1/28/22, pg. 33). Petitioner did not received TTD from August 10, 2021 to the date of the Arbitration hearing on January 8, 2022. (Tr. 1/28/22, pg. 34).

Medical Treatment Since Prior Arbitration

Post the January 28, 2022, arbitration, Petitioner has received the following medical treatment. On August 16, 2022, Petitioner underwent a lumbar fusion surgery performed by Dr. Ares, a neurosurgeon. Which did not resolve his symptoms. (Tr. pg. 10). Petitioner continued to experience numbness, tingling, and weakness in his legs, along with low back pain, impairing his ability to stand sit, walk or sleep for extended periods of time. (Tr. 6/10/25, pg. 13). Because his symptoms failed to improve, Dr. Ares advised that petitioner remain off work. (Tr. 6-10-25, pgs. 10-11).

Following his fusion surgery, Petitioner sought care from Dr. Joseph Alleva, a physical medicine doctor to address his ongoing symptoms. (Tr. pg. 13). Dr. Alleva recommended epidural steroid injections to alleviate the low back pain and numbness. Petitioner was treated with the injections, which had little effect. Because the injections provided little relief, Dr. Alleva kept Petitioner off work. (Tr., pg. 13-15).

During 2025 Petitioner treating with Dr. Riegelhaupt, a foot surgeon, for nerve pain in his feet. (Tr. pg. 14). After several visits, Dr. Riegelhaupt also recommended Petitioner to remain off work due to his condition. (Tr. pg. 15).

Petitioner has not returned to work since the arbitration hearing of June 10, 2025. (Tr. pg. 15). Petitioner's last temporary total disability payment was valid up until March 15, 2023. Petitioner has not received TTD benefits since that date. (Tr. pg. 16).

PETER HOPP

Petitioner testified that he continues to suffer from pain radiating down his back, buttocks, and feet, as well as numbness and weakness in both legs. (Tr. pg. 17). Petitioner testified that his symptoms significantly limit his mobility, endurance, and daily activities. He cannot walk more than a few blocks without taking breaks, begins to feel discomfort from standing after just five minutes, and is unable to sleep through the night due to his pain. (Tr. pgs. 17-19).

Petitioners testified that his job as an operating engineer requires him walking on uneven ground, climbing into large equipment, and maintaining control over jostling machinery.

Petitioner testified that returning to this type of work is not feasible. (Tr. pg. 19).

Petitioner currently takes Gabapentin for nerve pain, but it makes him feel sluggish and has little to no effect on symptom relief. (Tr. pg.19- 20).

Petitioner testified that he currently has weakness and tingling in his legs and feet and lower back pain from the surgery locations down to his feet. He does not sleep through the night due to constant shifting of the back and pain. He has difficulty with stairs, standing for more than five minutes, and walking distances of 2 to 3 blocks. (Tr. Pgs. 16 -19).

Petitioner testified that Respondent has not offered a light duty position. Respondent does provide e-learning for people on light duty which he described as sitting in front of a computer and completing computer-based training.

Petitioner testified that to sit through the e-learning course would be very hard on him. (Tr. p.26).

Petitioner testified that he did not participate in e-learning because his union contract with the Respondent does not allow anything other than full-duty work. (Tr. p. 25).

ANN WILSON

Ms. Williams testified for the Petitioner. Ms. Williams met Petitioner on September 6, 2024. They see each other quite often, mostly every day and describe their relationship as close companions. Petitioner accompanies Ms. Williams as her date for fundraisers, social events, and work functions that she holds as an Illinois State Representative. (Tr. pgs. 29-30). Likewise, Ms.

Williams is Petitioner's date to social events and described Petitioner as very active in the German community. They attend a lot of functions together. (T. Pg. 30).

While he does attend events with his partner, Ms. Williams, his mobility constraints require special accommodations. (Tr. pg. 30). Ms. Williams purposefully avoids bringing him to any that would require remaining in a fixed position for extended periods, such as eight-hour engagements. (Tr. pg. 37).

Section 12 Exam Dr. Deutsch

Dr. Deutsch testified via deposition on September 18, 2025. (RX. 2)

On February 10, 2023, Dr. Harel Deutsch, conducted a section 12 exam on petitioner. (RX.2, p. 11). Petitioner reported persistent bilateral numbness and back pain. (RX.2, p. 17). Dr. Deutsch diagnosed Petitioner with a lumbar degenerative condition and morbid obesity noting advanced diffused degenerative arthritis as confirmed on an MRI. (RX.2 pgs. 19-20). Dr. Deutsch opined that the August 22, 2022, lumbar fusion was not appropriate because Petitioner's complaints were not consistent with the MRI findings and Petitioner was not a candidate for a lumbar fusion surgery. Dr. Deutsch testified noted that even after the surgery Petitioner had the same complaints as before the surgery. (RX. 2. ps. 22 - 23). Dr. Deutsch testified that Petitioner would not benefit from any further physical therapy, pain management, spinal surgery, diagnostic testing, or other treatment for ongoing complaints of back pain. (RX. 2 p. 24 further physical

therapy, pain management, spinal surgery, diagnostic testing, or other treatment for ongoing complaints of back pain. (*Id.*, Pg. 24.)

Dr. Deutsch initially opined that Petitioner could perform light duty work with restrictions and anticipated that Petitioner might return to medium duty work by May 15, 2023 (RX. 2, p. 25). However, he testified his projection was speculative and not based on Petitioner's actual condition and that he never saw any medical records past February 10, 2023. Dr. Deutsch was unaware if Petitioner received treatment past that date. (RX. 2, pgs. 29-31). Dr. Deutsch acknowledged that Petitioner had not yet reached maximum medical improvement (MMI) at the time of the exam and conceded that future deterioration or additional surgery was possible. (RX.2, pgs. 29-30).

Dr. Ares Testimony

Petitioner's treating physician Dr. Ares testified via evidence deposition on February 19, 2025. (PX. 9) He testified and opined that Petitioner should remain off work in all capacities (RX. 2, p. 16). Dr. Ares testified that on multiple occasions between October 2022 and June 2024, he documented Petitioner's pain, numbness, and inability to sit for long periods of time and reiterated his recommendation for continued physical therapy and pain management. (PX. 9),. On June 20, 2024, Dr. Ares referred Petitioner for additional treatment, including facet blocks and coccyx injections, and again confirmed that Petitioner had not been cleared to return to work. (PX. 9, pgs. 13-14). Dr. Ares testified that a referral to a nonsurgical specialist does not imply readiness to work, but rather a change in treatment direction. (PX. 9, pgs. 25-26).

Conclusion of Law

The Arbitrator adopts the above Findings of Fact in support of the Conclusions of Law as set forth below. The claimant bears the burden of proving every aspect of his claim by a preponderance of the evidence. *Hutson v. Industrial Commission*, 223 Ill.App.3d 706, 714 (Ill. App. 5th Dist. 1992).

(F) Whether Petitioners current condition of ill-being is causally related to his work injury?

The Arbitrator finds that Petitioner's current condition of ill-being is causally related to the July 14, 2018 work injury.

The issue was previously tried on January 28, 2022. The Arbitrator rendered a decision that was reaffirmed and adopted by the Commission stating that Petitioner's work accident, and his resulting lumbar radiculopathy, arose out of and occurred during the course of his employment. (PX. 13). As in the first hearing, the Arbitrator finds that the Petitioner testimony to be credible and consistent with the medical evidence submitted. There has been no new evidence to suggest Petitioner's condition arose from any other source. Accordingly, the Arbitrator has found Petitioner's current condition of ill being is causally related to the July 14, 2018, work injury.

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

Section 8(a) of the Act (820 ILCS 305/8(a) (West 2002)) states, in relevant part: “The employer shall provide and pay 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) (West 2002). The claimant bears the burden of proving, by a preponderance of the evidence, her entitlement to an award of medical care under section 8(a). *Id.*

Since the first arbitration hearing on January 28, 2022, Petitioner underwent a lumbar fusion surgery performed by Dr. Ares, sought care from Dr. Joseph Alleva, and began seeing Dr. Riegelhaupt in attempt to alleviate his pain. (Tr. pgs. 9-15). Petitioner Credibility testified that due to his constant pain, he cannot walk long distances, feels discomfort after standing for five minutes, and is unable to sleep through the night. (Tr. pgs. 17-19).

Dr. Ares testified that the treatment and care administered to the Petitioner was reasonable and necessary (PX. 9, pgs. 15-16). While treating the Petitioner, he recommended physical therapy and pain management. (PX.9, p. 9). Dr. Ares testified that he referred Petitioner to a nonsurgical specialist, and that the referral did not imply readiness to work but a change in medical direction. (PX. 9, pg. 25-26).

Arbitrator also gave consideration to Respondents section 12 examiner, Dr. Harel Deutsch. Dr. Deutsch testified that Petitioner’s injuries, and symptoms were consistent with the need for a lumbar surgery. (RX.2, pgs. 17, 21-23). Arbitrator notes that Dr. Deutsch testified that his projection of Petitioner’s recovery was speculative and not based on Petitioner’s current condition. (RX.2, pgs. 29-30).

Petitioner Exhibit 6 are medical bills the Petitioner incurred in the amount of \$2,433.00 from Athletico Physical Therapy. (PX.6, pg. 297).

Based on the Testimony of Dr. Ares and the Medical bills admitted into evidence, the Arbitrator finds that Respondent is liable for Petitioner's unpaid medical bills pursuant to the Illinois Fee Schedule.

(K) Whether Respondent is liable for unpaid TTD from March 16, 2023, to December 28, 2025 (116 and 5/7 weeks)?

“TTD compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, ‘[W]eekly compensation * * * shall be paid * * * as long as the total temporary incapacity lasts,’ which [Illinois courts have] interpreted to mean that 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.” Interstate Scaffolding, Inc. v. Illinois Workers' Comp. Comm'n, 236 Ill. 2d 132, 142 (2010).

Petitioner received no TTD benefits from March 16, 2023 to the date of the Arbitration, June 10, 2025.

Arbitrator has found that the Petitioner's condition is casually related to the July 14, 2018, work accident, the Arbitrator and as such, Arbitrator finds Petitioner to 116 and 5/7 weeks of unpaid TTD benefits.

In reaching his conclusion, the Arbitrator relies mainly on the credible testimony of the Petitioner, when he testified that, he was not offered light duty but was offered e-learning. Petitioner testified he had difficulties sitting for long periods of time, and sitting in front of a computer would be very rough on him., in addition to being against his employment contract through his union. (Tr. Pgs. 25-26). There was nothing entered into evidence that rebutted his testimony.

(N) Whether Respondent is due any credit, the Arbitrator finds as follows:

The Arbitrator has found that Petitioner's low back injury was causally related to his July 14, 2018 work accident. The issue was previously tried on January 28, 2022, with similar results and confirmed by the commission. There has been no medical evidence admitted into evidence suggesting that any medical treatment was related to any other cause other than Petitioner's July 14, 2018 work accident.

Arbitrator gives less weight to Dr. Deutsch, who conducted a section 12 examination on Petitioner. (RX.2, p. 11). Dr. Deutsch commented that Petitioner might be able to return to work in a medium duty capacity by May 15, 2023. but testified his projection was speculative and not based on Petitioner's actual condition. (RX. 2, pgs. 25-30). He was not provided any medical records after February 10, 2023, and was unaware that Petitioner received medical treatment after his examination in February of 2023. (RX. p. 31). Additionally, he acknowledged that Petitioner had not yet reached maximum medical improvement (MMI) at the time of the exam and conceded that future deterioration or additional surgery was possible. (RX. 2, pgs. 29-30).

Therefore, based on prior findings and findings made in this decision Arbitrator finds that Respondent is not entitled to any credit.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC004910
Case Name	Christine Jill Poff v. State of Illinois - Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0051
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Brad Reynolds
Respondent Attorney	Eunsoo Kim

DATE FILED: 2/23/2026

/s/Marc Parker, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILL)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CHRISTINE POFF,
 Petitioner,

vs.

NO: 21 WC 004910

DIXON CORRECTIONAL CENTER,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of prospective medical care and permanent partial disability, and being advised of the facts of law, modifies the Decision of the Arbitrator with respect to the permanent partial disability award only and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part thereof.

Regarding the issue of permanent partial disability, the Arbitrator concluded Petitioner sustained permanent partial disability to the extent of 10% loss of use of the person as a whole for her thoracic spine injuries. On review, the Commission modifies the Arbitrator's award to 15 % loss of use of the person as a whole based on the evidence submitted.

The five factors upon which the Commission must base its determination of the level of PPD benefits to which a claimant is entitled, include: (i) the level of impairment contained within a permanent partial disability impairment report; (ii) the claimant's occupation; (iii) the claimant's age at the time of injury; (iv) the claimant's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. 820 ILCS 305/8.1b(b) (West 2020). However, "[n]o single enumerated factor shall be the sole determinant of disability." *Id.* § 305/8.1b(b)(v).

Regarding factor (i) Level of Impairment, the Commission finds the Arbitrator correctly gave no weight to this factor as an impairment rating was not submitted by either party.

Regarding factor (ii) Occupation, the Commission finds the Arbitrator correctly gave significant weight and relevance to this factor, but disagrees with the Arbitrator's conclusion that Petitioner's un rebutted permanent restrictions as set forth by the FCE and Dr. Dahlberg are not persuasive. The Commission acknowledges Petitioner had not made a formal accommodation request with Respondent at the time of trial, however, that fact alone does not diminish the permanent restrictions given by her providers and recommended by Respondent's Section 12 examiner, Dr. Amin. Moreover, Petitioner testified she had not lifted over her recommended

restrictions since returning to work and she could sit/stand as needed. For these reasons, we would assign significant weight and relevance to this factor in favor of increased permanency.

Regarding factor (iii) Age, the Commission assigns moderate weight and relevance to this factor, noting Petitioner was 50 years old and due to her age, would have to work with her disability for several more years.

Regarding factor (iv) Earning Capacity, the Commission finds the Arbitrator correctly gave no weight to this factor because there was no evidence of reduced earning capacity submitted at trial.

Regarding factor (v) Disability, the Commission finds the Arbitrator correctly gave great weight and relevance to this factor. Petitioner suffered a thoracic disc herniation because of her fall at work and underwent multiple rounds of physical therapy, an ESI injection, trigger point injections, and facet injections. At the time of trial, Petitioner was taking Tramadol daily to get through her workday and treating with pain management every three months for ongoing pain and symptoms. Overall, Petitioner reported difficulty sleeping, sitting longer than 60 minutes, standing longer than 90 minutes, and pain after long drives. Regarding hobbies, Petitioner testified she could no longer ride motorcycles, boat, or camp because of her pain.

In conclusion, the Commission modifies the Decision of the Arbitrator with respect to the issue of permanent partial disability and awards 15% person as a whole for Petitioner's thoracic spine condition.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator dated March 24, 2025, is modified as stated herein. The Commission otherwise affirms and adopts the Decision of the Arbitrator.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner permanent partial disability benefits of \$871.73/week for 75 weeks representing 15% person as a whole for injuries sustained to her thoracic spine, and pursuant to Section 8(d)(2) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay all reasonable and necessary medical expenses directly to the providers, as outlined in Petitioner's exhibits and provided in Section 8(a) and 8.2 of the Act.

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

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

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 4910

Page 3

February 23, 2026

o: 1/29/26

MP/ns

068

/s/ Marc Parker
Marc Parker

/s/ Maria E. Portela
Maria E. Portela

/s/ Christopher A. Harris
Christopher A. Harris

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	21WC004910
Case Name	Christine Jill Poff v. State of Illinois Department of Corrections
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	8
Decision Issued By	Gerald Granada, Arbitrator

Petitioner Attorney	Brad Reynolds
Respondent Attorney	Danielle Curtiss

DATE FILED: 3/24/2025

/s/ Gerald Granada, Arbitrator
Signature

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

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



March 24, 2025

/s/ Michele Kowalski
Michele Kowalski, Secretary
Illinois Workers' Compensation Commission

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**

Christine Jill Poff

Employee/Petitioner

Case # **21** WC **004910**

v.

Consolidated cases: _____

Illinois Department of Corrections

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 **February 21, 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 **January 11, 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 **\$85,690.80**; the average weekly wage was **\$1,647.90**.

On the date of accident, Petitioner was **50** years of age, *married* with **1** dependent children.

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

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

Respondent shall be given a credit of **\$153,793.07** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$23,034.15** for other benefits, for a total credit of **\$176,827.22**.

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

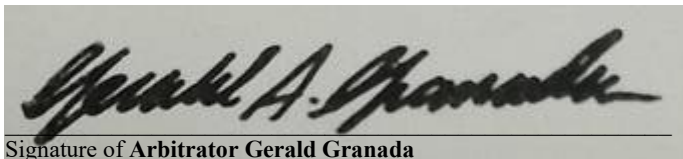
ORDER

RESPONDENT SHALL PAY DIRECTLY TO THE PROVIDER, MEDICAL EXPENSES FOR TREATMENT, PURSUANT TO THE ILLINOIS MEDICAL FEE SCHEDULE AS PROVIDED IN SECTIONS 8(A) AND 8.2 OF THE ACT. THE EXPENSES ARE INCLUDED IN PETITIONER'S EXHIBITS. RESPONDENT SHALL RECEIVE A CREDIT FOR ALL MEDICAL EXPENSES PAID.

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY FOR 50 WEEKS, WHICH REPRESENTS 10% LOSS OF PERSON AS A WHOLE PURSUANT TO 8(D)(2) OF THE ACT AT THE PPD RATE OF \$871.73/WEEK.

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

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



Signature of Arbitrator Gerald Granada

March 24, 2025

Christine Poff v. Illinois Department of Corrections, 21WC004910**Attachment to Arbitration Decision****Page 1 of 5****FINDINGS OF FACT**

This case involves Petitioner Christine Poff, who alleges to have sustained injuries while working for Respondent Illinois Department of Corrections on January 11, 2021. Respondent disputes Petitioner's claim, with the issues being: 1) causation; 2) medical expenses; and 3) permanency.

Petitioner began working for Respondent as a full-time Corrections nurse on September 1, 2017. In this role, Petitioner is responsible for the medical care of inmates as needed. On January 11, 2021, while on a break, Petitioner walked to the parking lot, where she fell on ice, landing on her bilateral hands and left hip, and her legs went out to the right. Petitioner stood up unassisted and went into work. She immediately reported the accident to her supervisor.

Summary of Medical Treatment

On January 12, 2021, Petitioner sought care at Physicians Immediate Care. (Px 1). She reported that she had slipped on ice the day prior and landed on her left hip. She was diagnosed with a left hip contusion, a strain of unspecified muscle, fascia and tendon at shoulder, cervicgia, and an abrasion of the left ankle.

On January 18, 2021, Petitioner followed up at Physicians Immediate Care reporting that she felt much better. She still experienced pain in her upper back. Petitioner reported concerns regarding returning to work at full duty, because she stated she had to lift up to 40 pounds. Petitioner was placed on light duty with restrictions of no lifting greater than 20 pounds.

On January 29, 2021, Petitioner reported to Physicians Immediate Care a 70% improvement but was still experiencing diffuse thoracic pain with activity. She was referred to physical therapy three times per week for four weeks. She underwent physical therapy at Physicians Immediate Care from February 1, 2021 through February 12, 2021.

On February 4, 2021, Petitioner reported to Physicians Immediate Care an 80 to 85% improvement in pain. She had completed two out of twelve physical therapy sessions, and reported that it had helped significantly. Petitioner noted persistent pain from T1 and T7, and mild discomfort of left trapezius and left bicep tendon groove. Petitioner's work restrictions were continued and she was to continue physical therapy.

On February 19, 2021, Petitioner reported to Physicians Immediate Care that for two weeks she had experienced worsening pain in her thoracic spine, despite oral steroids, muscle relaxer, meloxicam, and the 20-pound lifting restriction. She was released from care for this condition and referred to an orthopedic surgeon.

On March 5, 2021 the records from Physicians Immediate Care note that Petitioner was previously released from care at the last visit and had been referred to an orthopedic surgeon, but that she was still waiting for approval. Petitioner reported some improvement in upper back, but still experienced pain to mid back with limited range of motion.

On April 8, 2021, Petitioner underwent an evaluation at Rockford Orthopedic with Dr. Ryan Enke. (Px 4, p. 487). Petitioner presented with middle back pain and reported that she had slipped and fell on the ice landing on her left side and her feet her to the side. She underwent x-rays which reveal some scoliosis. Dr. Enke recommended an MRI of thoracic spine.

On June 16, 2021, Petitioner underwent an MRI of the thoracic spine which revealed a posterocentral herniation at T7-T8 causing mild spinal canal stenosis. (Px 2, p. 316). She followed up with Dr. Enke on July 9, 2021 and

Christine Poff v. Illinois Department of Corrections, 21WC004910**Attachment to Arbitration Decision****Page 2 of 5**

August 6, 2021. Petitioner re-started physical therapy for the thoracic spine, and work restrictions were continued. She underwent physical therapy at Dixon Physical Therapy from July 12, 2021 through September 14, 2021. (Px 5, p. 541).

On September 9, 2021, Dr. Enke recommended an epidural steroid injection in her thoracic spine. (Px 4, p. 496). On October 28, 2021, Petitioner underwent a T7-T8 Translaminar ESI under fluoroscopy at Rockford Orthopedic.

On December 10, 2021, Petitioner reported to Dr. Enke that her pain had increased since the injection, and that it provided no relief. Dr. Enke noted that she has no advanced stenosis or nerve compression and this is not typically something that needs surgery. Trigger point injections and gabapentin were recommended. On January 20, 2022, Petitioner underwent trigger point injections in her thoracic spine. Petitioner followed up with Dr. Enke on February 10, 2022, and reported no relief from the trigger point injections.

On March 7, 2022, Petitioner underwent an Independent Medical Examination (“IME”) with Dr. Beejal Amin. (Rx 7). Petitioner was diagnosed with a thoracic disc herniation at the level of T7-T8. He noted that she had positive midline tenderness to palpation just below the bra line. Dr. Amin opined that there was a causal relationship between Petitioner’s current condition and the work accident. Dr. Amin found that physical therapy and thoracic spinal injections were reasonable and necessary for the treatment. Dr. Amin noted that, as Petitioner had failed non-surgical management, a referral to a spine surgeon was warranted. Dr. Amin opined that additional spinal injections or continued treatment in the pain clinic was not warranted. He found that Petitioner’s expected date of maximum medical improvement would depend on whether she underwent surgery.

On July 8, 2022, Dr. DeMaio of Northwestern Medicine evaluated Petitioner for surgery. (Px 3, p. 447). Dr. DeMaio noted that Petitioner had had persistent central thoracic back pain since slipping on ice while at work. Dr. DeMaio also noted that she had undergone epidural steroid injections and physical therapy which had not alleviated her pain. She was referred to the Mayo Clinic, but that referral was denied, so she was seen at Northwestern. Dr. DeMaio recommended facet injections. Surgery was not recommended.

On November 4, 2022, Petitioner underwent an evaluation at the Rockford Pain Center with Dr. Dahlberg, DO. (Px 2). Petitioner was diagnosed with thoracic facet arthropathy, thoracic back pain, and an unspecified inflammatory spondylopathy. Dr. Dahlberg noted that, while Petitioner did not have any objective pathology on the imaging in the facets, it was reasonable to perform facet joint injections at T9-10 and T10-11. She followed up with Dr. Dahlberg on December 16, 2022, and reported that she was still waiting for the injections to be approved by insurance. Petitioner was instructed to follow up after her IME.

On January 27, 2023, Petitioner underwent a second IME with Dr. Amin. (Rx 8). He diagnosed Petitioner with a thoracic disc herniation and thoracic back pain. He recommended thoracic facet injections. Dr. Amin opined that if these injections relieved her pain, then she would benefit from ablative therapy. However, if her symptoms did not improve with injections, then re-evaluation by her treating spine surgeon was recommended.

On March 30, 2023, Petitioner underwent care at the Rockford Pain Center on March 30, 2023, where she underwent an intra-articular facet joint injections at T9-T10 and T10-11. (Px 2)

On April 28, 2023, Petitioner reported to the Rockford Pain Center that the injection did not provide any alleviation of her thoracic pain. Dr. Dahlberg referred her to Rockford Spine Center for surgical consultation, based upon the recommendations from the IME physician.

On June 9, 2023, Petitioner followed up at the Rockford Pain Center. Petitioner reported that she had had two

Christine Poff v. Illinois Department of Corrections, 21WC004910**Attachment to Arbitration Decision****Page 3 of 5**

surgical opinions. One surgeon informed her that she would require surgery, but the other surgeon said surgery was not warranted. Petitioner sought an opinion from Dr. Sliva, hoping that Dr. Sliva would help to clarify both positions.

On July 25, 2023, Petitioner saw Dr. Sliva at Ortho-Illinois. (Px 4, p. 515). Petitioner underwent an MRI of the thoracic spine which revealed other intervertebral disc displacement in the thoracic region and a T7-8 disc herniation with axial thoracic back pain but without evidence of thoracic radiculopathy or myelopathy. Dr. Sliva noted two options: First, she could continue her current course. Second, she could consider additional non-operative treatments including activity modifications, home based exercise programs, medications, physical therapy, and injection or pain management therapies. Dr. Silva noted that surgical intervention is not an option as the condition is not known to respond favorably to surgical treatment and the symptoms and risks did not justify this type of intervention.

On July 28, 2023, Petitioner followed up at the Rockford Pain Center. (Px 2). Dr. Dahlberg referred Petitioner to ATI for a Functional Capacity Evaluation (“FCE”). Petitioner was instructed to return in one month for the FCE results. Dr. Dahlberg noted that there were no plans for further treatment other than medication management and lifestyle modification within the limits of the FCE.

On August 31, 2023, Petitioner underwent an FCE at ATI. (Px 6, p. 577). A job description was not received. Petitioner reported that her job involved constant standing, constant walking, and that she may have to lift up to 40 plus pounds. Petitioner was found to function at a medium physical demand level, but below the medium demand level for her job based on her self-report that she was required to lift to 40 plus pounds. Petitioner was able to lift 21.4 pounds, on occasion above shoulder, 32.4 pounds occasionally from desk to chair, and 25.8 pounds from chair to floor. She was able to carry 62 pounds right and 57 pounds left occasionally. Petitioner was able to sit for six hours, stand for four hours, and walk for eight hours.

Petitioner followed up regarding her FCE at the Rockford Pain Center on September 22, 2023. (Px 2). The FCE outlines clear objective limitations. Petitioner was found to be at MMI. Long-term medications would be required as needed. No further interventions were required. It noted that she had had three surgical consults and that surgery was not an option for her. She had failed injection therapy and physical therapy.

On December 22, 2023, Petitioner reported to the Rockford Pain Center pain in her head, neck, and mid-back. (Px 2) *Id.* She was currently taking tramadol, but that within five to six hours of taking the medication, her pain returns. Petitioner stated that she works 12-hour days, five days per week. Dr. Dahlberg recommended an increase in her medication, and instructed Petitioner to follow up in three months.

On March 26, 2024, Petitioner saw Dr. Dahlberg at the Rockford Pain Center for a routine follow-up. Petitioner reported ongoing pain in her head, neck, shoulders, and upper back. She reports that her pain was managed more throughout her shift, and she was doing well. Petitioner noted that she remained functional and was working full-time, managing her household activities, and her own self-care.

Summary of Current Condition

Petitioner testified that she has continued pain, and difficulty sleeping. She is unable to sit for more than 60 minutes at a time. She is unable to stand for more than 90 to 120 minutes. Petitioner testified that she is unable to partake in recreational activities she enjoyed prior to the accident, such as boating, snowmobiling, and motorcycling. On cross examination, Petitioner admitted that she participates in “off-roading” with her Jeep, twice per year. She admitted that she got married in an “off-roading” ceremony. Petitioner admitted traveling to Colorado Springs in October 2024 for her wedding.

Vocational Status

Petitioner was off work from January 12, 2021 through October 31, 2023. She returned to work full time on November 12, 2023. Prior to the injury, Petitioner was employed as “corrections nurse 1,” and now holds the position of “corrections nurse 2.” Petitioner’s salary has increased since the date of accident. Prior to the injury, Petitioner worked 8-hour days, now she works 12 and a half hour days. Since returning to work, Petitioner has two different positions in which she assigned: float nurse and charge nurse. She is assigned to each job an equal number of times per month. As a float nurse, she is responsible for picking up and logging the sick call slips, walking the camp, charting, and checking in on sick patients. As a charge nurse, she is responsible for organizing the work for the nine nurses under her. Petitioner is also responsible for answering telephones, completing paperwork, and responding to codes if there is no one else available.

Petitioner testified that prior to the injury, she was assigned to the same tasks as she is currently performing. (T 21). Petitioner testified that she doesn’t have to “lift anything heavy.” She testified that she does not remember the exact number, but that she thinks “it’s under 40 pounds.” Petitioner testified that IDOC has been accommodating this lifting restriction. Petitioner did not have a lifting restriction prior to the accident. Petitioner does not have any documentation confirming she is receiving accommodations, and did not complete any paperwork requesting for same. A CMS Job Description was entered into evidence, which is silent as to any lifting requirements for the position of corrections nurse 2. (Rx 4).

A Vocational Evaluation Report dated November 6, 2023, authored by Rehabilitation Counselor Kari Stafseth-Zamora was admitted into evidence. (Px 8). Petitioner reported to Stafseth-Zamora that her job duties require her to push a medical cart exceeding 200 pounds and to perform constant standing. Stafseth-Zamora opined that Petitioner had lost access to her preinjury job of Nurse within IDOC. She noted as the basis for her opinion Petitioner’s job requirement of pushing a 200-pound cart and constant standing which she found exceeds the restrictions outlined in the FCE. Stafseth-Zamora opined that Petitioner is alternatively employable in positions such as Nurse, Behavioral Health Nurse, Shift Coordinator, and similar positions. Stafseth-Zamora further noted that Petitioner would benefit from vocational rehabilitation services.

Testimony of Monica Fuller

Monica Fuller testified that she has held the role of Health Care Unit Administrator at Dixon Correctional since 2022. In this role, she oversees operational aspects of the health care unit. She testified that Petitioner is currently in the same role she was in prior to the accident. . The only accommodation Petitioner receives in her current employment is related to a pre-accident, unrelated condition, which prevents her from coming into contact with certain materials. Fuller agreed that, in her role, Petitioner is required to lift up to 40 pounds, sit, stand, and stoop. Petitioner is not required to sit, stand, or stoop for a specific amount of time, as the demands of the job vary. Fuller was unable to testify as to a specific time where Petitioner lifted more than 40 pounds since she returned to work in November 2023.

CONCLUSIONS OF LAW

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met her burden of proof. In support of this finding, the Arbitrator relies on the Petitioner's unrebutted testimony and the medical evidence, which all show Petitioner sustained a thoracic disc herniation injury as a result of her work accident. There was no evidence offered to rebut Petitioner on this issue. Therefore, the Arbitrator concludes that the Petitioner's current condition of ill-being is causally connected to her undisputed January 11, 2021 work accident.
2. Regarding the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment related to her January 11, 2021 work accident has been reasonable and necessary in addressing her work-related back condition. This finding is based on the Petitioner's unrebutted testimony and the preponderance of the medical evidence. Accordingly, the Arbitrator hereby orders Respondent to pay any unpaid, related medical expenses as set forth in Petitioner's exhibits, subject to the Fee Schedule pursuant to Section 8(a) and 8.2 of the Act. Respondent shall receive a credit for any medical expenses it has already paid.
3. Regarding the issue of 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 submitted into evidence and the Arbitrator gives no weight and relevance to this factor; (ii) Petitioner was an corrections nurse 1 who was released to return to work with no restrictions following this accident (the Arbitrator notes that there was an FCE and a vocational evaluation performed that set forth restrictions, but was not persuasive given the medical evidence and testimony of Petitioner's supervisor) - a factor to which the Arbitrator gives significant weight and relevance; (iii) Petitioner was 50 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 thoracic disc herniation, for which she underwent care in the form of physical therapy and injections from which Petitioner still has continued complaints of pain, which has affected her sleep, sitting, standing and some of her recreational activities - 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 10% loss of use of the person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029519
Case Name	William Higgs v. Bimbo Bakeries USA
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0052
Number of Pages of Decision	21
Decision Issued By	Raychel Wesley, Commissioner

Petitioner Attorney	TODD STRONG
Respondent Attorney	Matthew Rokusek

DATE FILED: 2/23/2026

/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))
☒ Modify Temporary Disability, Permanent Disability	☐ PTD/Fatal denied
	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

WILLIAM HIGGS,

Petitioner,

vs.

NO: 21 WC 29519

BIMBO BAKERIES USA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection for the alleged neurological condition/traumatic brain injury on November 9, 2020, entitlement to temporary disability benefits, entitlement to incurred medical expenses, and the nature and extent of Petitioner's permanent disability, and being advised of the facts and law, modifies the Decision as set forth below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

CONCLUSIONS OF LAW

I. Temporary Disability

The Arbitrator awarded Temporary Total Disability ("TTD") benefits from November 10, 2020 through October 6, 2021. The Commission views the evidence differently.

The record reflects work restrictions were first imposed when Petitioner presented to the Occupational Health Clinic on the date of accident, and Petitioner began missing time from work on November 10, 2020. PX4. The Commission observes that on July 28, 2021, Dr. Frank Lee, Petitioner's treating orthopedic surgeon, released Petitioner to a trial return to full duty as of August 2, 2021. PX7. Therefore, the Commission finds Petitioner's initial temporary total disability period is from November 10, 2020 through August 1, 2021.

The Commission further notes Petitioner returned to Dr. Lee on August 25, 2021 and reported significantly decreased strength and difficulty with motion; noting Petitioner had undergone a recent cervical spine MRI that “does not reveal a cervical reason for shoulder weakness,” Dr. Lee ordered an MR arthrogram to evaluate the rotator cuff. PX7. On September 15, 2021, Dr. Lee authorized Petitioner off work pending further imaging. PX7. This off work order remained in effect through October 6, 2021, when Dr. Lee imposed permanent restrictions. PX7. As such, the Commission finds Petitioner is entitled to a second period of TTD benefits from September 15, 2021 through October 6, 2021.

Based on the above, the Commission modifies the Decision to find Petitioner is entitled TTD benefits for 41 weeks:

November 10, 2020 through August 1, 2021	37 6/7 weeks
September 15, 2021 through October 6, 2021	<u>3 1/7 weeks</u>
Total	41 weeks

II. Permanent Disability

The Arbitrator found Petitioner’s right shoulder injury resulted in a loss of occupation and awarded 80% loss of use of the person as a whole. The Commission’s §8.1b(b) analysis yields a different result.

§8.1b(b)(i) – impairment rating

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

§8.1b(b)(ii) – occupation of the injured employee

Petitioner was a mixer helper and, as a result of his shoulder injury, he was unable to return to his prior employment. The Commission places great weight on this factor in determining permanent partial disability.

§8.1b(b)(iii) – age at the time of the injury

Petitioner was 59 years old on the date of his accidental injury. While Petitioner was nearing retirement age, the Commission notes Petitioner will endure his significant functional residual deficits for the remainder of his life. The Commission places moderate weight on this factor.

§8.1b(b)(iv) – future earning capacity

There is no vocational evidence of Petitioner’s future earning capacity. While the record reflects Petitioner is no longer employed and has been awarded Social Security Disability benefits, the Commission observes there is no indication as to whether this is predicated on his work-related

shoulder injury or his non-work-related neurological condition. Given the circumstances, the Commission places limited weight on this factor.

§8.1b(b)(v) – evidence of disability corroborated by treating medical records

Petitioner's work accident resulted in significant damage to his right shoulder: Dr. Lee's December 2, 2020 office note reveals the doctor reviewed Petitioner's MRI images and identified a "retracted 2 tendon cuff tear" requiring surgical repair. PX7. On February 4, 2021, Dr. Lee performed right shoulder arthroscopy with double row repair of superior and posterior rotator cuff tears, single row repair of subscapularis tear, and biceps tenodesis. PX12. Petitioner underwent post-operative physical therapy and on October 6, 2021, Dr. Lee imposed significant restrictions—close to body lift, no overhead lift, limit outstretched and repetitive motion, desk duty—that he concluded would likely be permanent. PX7. Petitioner testified he has severe functional deficits in his right shoulder: his right shoulder "crinkles and pops," he cannot lift his arm "too far up," and he is not able to lift much with his right arm. T. 43-44. The Commission places significant weight on this factor.

The Commission finds Petitioner suffered a loss of career as a result of his November 9, 2020 shoulder injury. Based on the foregoing analysis, we further find Petitioner sustained a 50% loss of use of the person as a whole under §8(d)2 of the Act.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 22, 2025, as modified above, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$824.38 per week for a period of 41 weeks, representing November 10, 2020 through August 1, 2021 and September 15, 2021 through October 6, 2021, that being the period of temporary total incapacity for work under §8(b) of the Act. Respondent shall have a credit of \$61,408.08 for TTD benefits previously paid. Pursuant to the parties' stipulation, Respondent shall reimburse Petitioner directly for LTD benefits paid simultaneously by New York Life, so that Petitioner may directly satisfy this period of New York Life's lien. (T. 4-12)

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$741.94 per week for a period of 250 weeks, as provided in §8(d)2 of the Act, for the reason that the shoulder injury sustained caused the 50% loss of use of the person as a whole (loss of trade).

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$75,00.00. 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.

February 23, 2026

RAW/mck

O: 1/28/26

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/s/ *Raychel A. Wesley*

/s/ *Carolyn M. Doherty*

/s/ *Frank J. Soto*

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	21WC029519
Case Name	William Higgs v. Bimbo Bakeries USA
Consolidated Cases	
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	16
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	TODD STRONG
Respondent Attorney	Matthew Rokusek

DATE FILED: 7/22/2025

*/s/ Adam Hinrichs, Arbitrator*_____
Signature**INTEREST RATE WEEK OF JULY 22, 2025 4.12%**

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**

William Higgs

Employee/Petitioner

v.

Bimbo Bakeries USA, Inc.

Employer/Respondent

Case # **21 WC 29519**

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 **May 12, 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 **11/9/2020**, 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, in part*, causally related to the accident.

In the year preceding the injury, Petitioner earned \$ 50,669.20; the average weekly wage was \$ 1,236.57.

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 \$ 61,408.08 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$ 61,408.08.

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

ORDER

Petitioner has met his burden and proven that his current condition of ill-being in his right shoulder is causally related to his work injury of November 9, 2020. However, Petitioner failed to meet his burden and prove by a preponderance of the credible evidence that his current neurological condition is causally related to his work injury of November 9, 2020.

Respondent shall pay Petitioner temporary total disability benefits of \$824.38/week for 45 weeks, commencing November 10, 2020 through October 6, 2021, as provided in Section 8(b) of the Act. Respondent shall receive a full credit for \$61,408.08 in TTD benefits paid. Respondent shall reimburse Petitioner directly for LTD benefits paid by New York Life from May 8, 2021 through October 6, 2021, so that Petitioner may directly satisfy this period of New York Life's lien, as stipulated at hearing.

Respondent shall pay Petitioner permanent partial disability benefits of \$741.94/week for 400 weeks, because the injuries sustained caused the 80% loss of use to Petitioner's person as a whole, as provided in Section 8(d)2 of the Act. Respondent shall pay Petitioner compensation that has accrued from October 6, 2021, through the date of this award, and shall pay the remainder of the award, if any, in weekly payments.

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

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



Signature of Arbitrator

JULY 22, 2025

This matter was tried on May 9, 2025, and the issues in dispute were causal connection, medical bills, temporary total disability (“TTD”), the nature and extent of the injury, and permanent total disability from June 8, 2023 to present. (AX 1, T. 4). Petitioner claimed entitlement to 134 and 2/7ths weeks of TTD benefits for the period of November 9, 2020 through June 7, 2023; whereas, Respondent disputed all TTD liability other than the 35 and 6/7ths weeks period from November 10, 2020 through July 28, 2021. (AX 1).

In addition, the parties stipulated that Petitioner received \$70,014.00 in long-term disability (“LTD”) benefits following the termination of TTD benefits. (T. 4-12). Although Respondent maintained that Petitioner is not entitled to TTD during this period, the parties stipulated that Respondent would receive credit for the LTD paid if TTD was awarded, and that any reimbursement owed to the carrier would be payable to Petitioner in the decision and that Petitioner would be solely liable to reimburse the carrier. (T. 11-12).

FINDINGS OF FACT

Mr. William “Bill” Higgs (“Petitioner”) was employed by Bimbo Bakeries USA, Inc. (“Respondent”) on November 9, 2020, when he sustained a compensable work injury. (AX 1). At the time of his accident, Petitioner was employed as a mixer helper, responsible for putting ingredients into the mixer to prepare for the next dough. (T. 29-30). After being sent on a break, Petitioner walked through the double doors and slipped and fell onto his right shoulder. (T. 32). Petitioner testified his bump cap went flying but did not testify that he hit his head. (T. 32). He immediately felt something was wrong with his right shoulder and was assisted by his co-worker, Mr. Harold Richey, to the supervisor’s office, where he met with the supervisor, Andrea Jones-Smith, to fill out accident paperwork. (T. 32-35). Petitioner’s wife, Ms. Theresa Higgs, was called to the plant to pick him up in order to take him to the occupational medicine clinic at Sarah Bush Lincoln Health Center (“Sarah Bush”). (T. 35).

Petitioner testified that in the days following his fall, he noticed that he “threw up quite a bit,” that he “noticed I didn’t like a lot of loud noises like the TV going and stuff like that,” that he slept a lot, and smelled blood. (T. 36-37). Petitioner subsequently received treatment for his injured shoulder, and also was sent for treatment with neurologists at Sarah Bush and Carle Clinic. (T. 38-40).

The contemporaneous accident reports were admitted by Respondent, and include reports from Petitioner, Ms. Jones-Smith, and Mr. Richey. (RX 1). Petitioner reported a consistent history of injury to his right shoulder in his report, which was signed and dated on November 9, 2020. (RX 1, pp. 1-2). Ms. Jones-Smith completed and signed the Management Report of Associate Injury or Illness on November 9, 2020, and also documented Petitioner’s report of the right shoulder injury. (RX 1, pp. 3-4). Mr. Richey completed and signed a Witness Statement on November 9, 2020, which documented that he saw Petitioner walk through double doors before he slid on a slick floor and went down. (RX 1, p. 5). Also included with these statements was a photograph of Petitioner’s injured shoulder. (RX 1, p. 9).

The Employer's First Report of Injury was completed by Ms. Zager Wordlaw on November 11, 2020, documenting the reported right shoulder injury. (PX 2, p. 2; RX 2). There was no documentation of any injuries except for the reported right shoulder injury in these statements. (RX 1, pp. 1-9; PX 2, p. 2; RX 2, pp. 1-5).

Mr. Richey completed a second witness statement for Petitioner, which was notarized on September 13, 2023, reporting that he had seen Petitioner's legs go about two-and-a-half to three foot off the ground before Petitioner fell down hard. (PX 3, p. 3). Mr. Richey further noted that Petitioner's bump cap was not on his head when he got to Petitioner. (PX 3, p. 3).

On November 12, 2020, Petitioner signed an application for adjustment of claim with the IWCC indicating that he sustained a right shoulder injury while working for Respondent on November 9, 2020. (RX 3, p. 1). This application was filed on December 15, 2020, and assigned case number 20WC030752. (RX 3, p. 1).

Approximately one year later, in late October 2021, Petitioner obtained a new attorney, and submitted a new application with the IWCC. (PX 1, p. 1). In his second application, Petitioner alleged injury to his back, right arm, right shoulder and head-whole person. (PX 1 p. 1).

Petitioner testified that he alleged injury to his right shoulder and head as part of this claim. (T. 46-47). Petitioner acknowledged he had prior health issues documented in his medical records that are unrelated to this accident (T. 53).

Mr. Richey testified for Petitioner at trial. (T. 19). At the time of Petitioner's injury, Mr. Richey was employed by Respondent as a mixer operator and identified himself as Petitioner's co-worker. (T. 19-20). He testified that as Petitioner was leaving for break, he saw Petitioner's feet rise two-and-a-half to three foot off the ground before Petitioner fell down. (T. 20-21). He helped Petitioner get up and to find a supervisor, and recalled him being a little confused and scared. (T. 22). Mr. Richey recalled Petitioner was wearing his bump cap earlier that day, but found it about 5 feet away from Petitioner after his fall. (T. 23-24). He did not see Petitioner strike his head in the fall (T. 24).

On November 9, 2020, Petitioner received medical treatment in the Occupational Health Clinic at Sarah Bush Lincoln and was examined by Staci Harminson, PA. (PX 4, p. 24). It was noted that earlier that day, Petitioner slipped on some water at work and fell directly onto his right shoulder. (PX 4, p. 24). Petitioner denied any other injury at that time, and specifically denied any neck pain, radiation of pain, numbness or tingling. (PX 4, p. 24). There was no documentation in this record of any head injury or loss of consciousness. (PX 4, p. 24). A neurological examination was completed and found Petitioner to be "alert and oriented x3." (PX 4, p. 24). It was further noted that Petitioner had normal speech, normal reflexes and his pain sensation was normal. (PX 4, p. 24). Petitioner was diagnosed with acute pain in the right shoulder and an x-ray demonstrated moderate degenerative type changes without evidence of fracture or dislocation. (PX 4, p. 24). Petitioner was placed on modified duty and advised to follow-up in 7 to 10 days. (PX 4, p. 24). Petitioner was released with a work restriction of no use of the right arm. (PX 4, p. 23).

On November 16, 2020, Petitioner returned to PA Harminson and denied any change in his pain from the previous week. (PX 4, p. 22). An MRI of the right shoulder was ordered for further evaluation. (PX 4, p. 22). There is no mention of any vomiting, headaches or other neurological complaints in this record. (PX 4, p. 22). Petitioner was continued on light duty with no use of his right arm. (PX 4, p. 21). Petitioner also presented to Dr. Jamie Martinez at Sarah Bush on that date to establish care per the recommendation of his cardiologist. (PX 5, p. 67). Petitioner was evaluated by Dr. Martinez for multiple pre-existing medical conditions to include Type 2 diabetes mellitus, staff skin infection, acute systolic heart failure, bipolar disorder, hyperlipidemia, hypertensive, cardiovascular disease, and persistent atrial fibrillation. (PX 5, p. 67). Petitioner was on a variety of medication, including Elquis, a blood thinner. (RX 5, p. 68). Dr. Martinez did not document a head injury. (PX 5, p. 67). However, Dr. Martinez did complete a neurological examination finding that Petitioner was “alert and oriented x4.” (PX 5, p. 67). Further, Dr. Martinez’s physical examination of Petitioner’s head showed that Petitioner was atraumatic, normocephalic and had no temporal or scalp tenderness. (PX 5, p. 67).

An MRI of the right shoulder was completed on November 23, 2020, and revealed a full thickness tear of the supraspinatus tendon with 3 cm tendon retraction, full thickness tear of the infraspinatus tendon with 2.8 cm tendon retraction, biceps tenosynovitis without tear, and advanced acromioclavicular joint degenerative change. (PX 6, pp. 202-203). Petitioner returned to PA Harminson on November 25, 2020 and was referred to Dr. Frank Lee for treatment of the right shoulder. (PX 4, p. 20). PA Harminson documented further investigation into Petitioner’s prior condition of his shoulder and noted that Petitioner did not recall any problems with his shoulder in the past. (PX 4, p. 20). She kept Petitioner on modified duty with no use of the right arm, and did not document any head injury or neurological complaints at that time. (PX 4, p. 19-20).

Petitioner returned to Dr. Martinez on December 1, 2020 for discussion of labs. (PX 5, p. 78). Dr. Martinez did not document any headaches, neurological complaints or vomiting at that time. (PX 5, p. 78-79). Dr. Martinez specifically noted that Petitioner denied any acute concerns. (PX 5, p. 78). Petitioner presented in “no apparent distress” with “[n]o temporal or scalp tenderness.” (PX 5, p. 78-79).

On December 2, 2021, Petitioner had an orthopedic consultation with Dr. Frank Lee at Bonutti Clinic to evaluate right shoulder pain. (PX 7, pg. 204-206). Dr. Lee recorded that Petitioner stated that on November 9, 2020, he slipped on a wet floor at work and landed on the side of his shoulder, and that he denied any previous injuries to the right shoulder. (PX 7, p. 204). Dr. Lee did not record any head injury or neurological findings at that time. (PX 7, p. 204-206). Following his physical examination and review of the MRI study, Dr. Lee diagnosed Petitioner with a right shoulder rotator cuff tear and recommended surgery, noting that Petitioner elected to proceed following approval from workers’ compensation. (PX 7, p. 205). Petitioner was to continue with one-handed duty. (PX 7, p. 208).

The first documented complaints of headaches and abdominal pain were documented on December 15, 2020, thirty-seven days after the work injury. (PX 6, p. 124; PX 9, p. 315). Petitioner initially sought care on that date from Dr. Martinez for abdominal pain that he now reported “started around November 9, 2020.” (PX 6, p. 124). Dr. Martinez did not record any headaches or neurological complaints, but sent Petitioner to the emergency department for evaluation of his “acute”

abdominal pain. (PX 6, p. 125). Petitioner then presented in the emergency department for an evaluation of his abdominal pain, nausea, headaches, and right shoulder pain complaints. (P 9, p. 315). Petitioner reported the work injury and for the first time indicated that he “thinks when he fall he also struck his head,” but did not believe he sustained a loss of consciousness. (PX 9, p. 315). In addition to his right shoulder complaints, Petitioner reported he had been experiencing headaches and nausea and vomiting since the fall as well as abdominal pain. (PX 9, p. 315). Petitioner’s headache is described as generalized over the entire head without report of blurry vision, no diplopia vision loss, no unilateral deficits or focal weakness. (PX 9, p. 315). On exam, Petitioner was “alert & oriented x 3,” “calm and cooperative,” with “normal affect.” (PX 9, p. 316). His head was atraumatic and normal cephalic and his neck was supple, non-tender, non-rigid, no masses or lymphadenopathy. (PX 9, p. 315). CT imaging of the abdomen and pelvis demonstrated no emergent abnormalities. (PX 9, p. 317). CT imaging of the brain demonstrated no acute intracranial abnormalities, but a tiny old lacunar infarct right cerebellar hemisphere, no extra-axial fluid collection, no hemorrhage, no mass, no evidence of acute infarct, and no paranasal sinus mucosal thickening. (PX 9, p. 317). An x-ray of the chest showed no acute cardiopulmonary process. (PX 9, p. 316). An ECG was performed without evidence of acute injury. (PX 9, p. 316). Petitioner was advised to follow-up with Dr. Martinez in his clinic. Based on Petitioner’s allegation that he hit his head in the fall, the physician opined that Petitioner’s headaches “could be indicative of a post concussive syndrome,” however, the doctor was not able to explain the etiology of Petitioner’s abdominal complaints. (PX 9, p. 317).

Petitioner returned to the emergency department at Sarah Bush on December 22, 2020 for ongoing abdominal pain. (PX 10, p. 378). He underwent a cardiac evaluations at Sarah Bush on December 23, 2020 for his cardiomyopathy as well for a preoperative examination for his shoulder surgery. (PX 10, p. 425). It was noted that Petitioner denied any neurological or psychiatric complaints on that date. (PX 10, p. 426). Petitioner was neurologically intact with normal mood and affect. (PX 10, p. 427). Petitioner next saw Dr. Martinez on December 28, 2020, and reported that since his discharge from the ER, he felt better and had not experienced any other episodes of diarrhea, only some abdominal cramping at times which he stated had been improving. (PX 5, p. 128). Petitioner was advised to continue watching his diet to address his abdominal pain. (PX 5, p. 129). Dr. Martinez would later clear Petitioner for right shoulder surgery on January 28, 2021. (PX 5, p. 139-141). Dr. Martinez further advised Petitioner his post-ED workup had not found any cause for his fatigue, which “might be secondary to hypotension.” (PX 5, p. 141). The smell disturbance “could be” due to an undiagnosed post-concussive syndrome, but Dr. Martinez noted there were no abnormalities on physical examination or on CT imaging to support that conclusion. (PX 5, p. 141).

On February 4, 2021, Dr. Lee performed arthroscopic surgery of the right shoulder with double row repair of the superior and posterior rotator cuff tears and single row repair of the subscapularis tear bicep tenodesis. (PX 12, pp. 500-501). Dr. Lee’s post-operative diagnosis was right shoulder rotator cuff tear and degenerative superior labral tear. (PX 12, p. 500). Petitioner returned to Dr. Lee’s office on February 8, 2021 and was kept off work at that time. (PX 12, pg. 239). Following Petitioner’s February 17, 2021 examination with Dr. Lee, Petitioner was again provided with one-handed duty, and referred to physical therapy for the shoulder. (PX 12, pp. 244-245, 248). Petitioner attended physical therapy at Sarah Bush Bonutti Clinic and continued to follow-up with

Dr. Lee. (PX 12; PX 13). On June 21, 2021 Petitioner was referred for work conditioning. (PX 13, p. 965).

On June 2, 2021, Petitioner attended his first neurological evaluation with Taylee M. Eldridge, APRN in the neurology department at Sarah Bush. (PX 14, p. 980). At that time, Petitioner reported his fall at work but reported he “does not recall hitting his head” and “does not believe he lost consciousness” but now reported “ongoing headaches, staring events, cognitive impairment, fatigue, hypotension and hypoxia since the fall.” (PX 14, p. 980). Petitioner had 4-5 headache days per week and that he would have to cover his head with a blanket to sleep 2-3 days per week. (PX 14, p. 980). Nurse Eldridge ordered an MRI and EEG for further evaluation, noting that Petitioner’s complaints of “staring events with urinary incontinence are highly suspicious for seizures.” (PX 14, p. 984).

An MRI of the brain with and without contrast was performed on June 8, 2021. (PX 15, pp. 1265-1266). The radiologist noted no acute intracranial abnormality identified; age related parenchymal volume loss and probable mild, chronic cerebral white matter microvascular changes. (PX 15, p. 1266). An EEG was performed on June 14, 2021, and showed foci of cerebral dysfunction affecting the bilateral temporal regions. (PX 16, pg. 1267-1269). No epileptiform discharge was present and no clinical or electrographic seizures were recorded. (PX 1, p. 1269).

Petitioner attended work conditioning for his right shoulder from June 27, 2021 through July 28, 2021. (PX 17). Petitioner was seen by Dr. Lee on July 28, 2021, who noted “I am concerned that his shifts are 10-12 hours and the shoulder will fatigue over that much time,” but felt a trial full duty release for 8 hours per day would be appropriate. (PX 7 p. 285). Petitioner’s discharge from work conditioning that date noted most of his goals had been met, including the ability to lift 50 pounds side to side frequently, to lift 50 pounds from floor to waist frequently and to simulate dumping a 50 pound bag frequently, but other goals were “not 100% met.” (PX 17, pp. 1297-1298).

Petitioner returned to Nurse Eldridge on August 3, 2021, reporting his biggest complaints that day were left sciatica and fatigue but that he was ready to go back to work. (PX 14, p. 1060). Nurse Eldridge noted that Mr. Higgs was started on Levetiracetam for an abnormal EEG. (PX 14, p. 1060). She conducted a neurological examination, which revealed that Mr. Higgs was awake, alert and orientated to his name, place and date, person and circumstances, had good attention and comprehension, spontaneous speech with good articulation, good judgment, good insight, and his affect was broad. (PX 14, p. 1062). She provided various diagnoses which included CAD, chronic anticoagulation, persistent atrial fibrillation, Type 2 diabetes mellitus, mild cognitive impairment, and fatigue. (PX 14, p. 1064). Nurse Edlridge noted the MRI of the brain showed atrophy, white matter microvascular changes and the EMG showed sensorimotor polyneuropathy, consistent with his diagnosis of diabetes. (PX 14, p. 1064). MRIs of the cervical and thoracic spine were ordered to evaluate Petitioner’s reported fatigue, and Petitioner was referred for neuropsychological testing for cognitive impairment. (PX 14, p. 1065). There is no indication of work restrictions for the neurological complaints at that time. (PX 14, p. 1065).

MRIs of the cervical and thoracic spine were completed on August 10, 2021. (PX 19, pg. 1445-001447). Petitioner began to undergo physical therapy for cervicgia on August 30, 2021, and

which would continue through June 29, 2022. (PX 20 pp. 1449,1451, 1603-1605). Petitioner's physical condition declined during that period and was only able to tolerate 30 minute sessions. (PX 20 p. 1451).

On August 25, 2021, less than one month after his last visit, Petitioner returned to Dr. Lee with significant right shoulder complaints. (PX 7 p. 291). Petitioner reported his strength in his right shoulder was okay at waist level but he has no strength with use if he tries to lift or do anything much higher than that and that he is not able to open a a jar like a bottle of pop, mouth wash, etc. (PX 7 p. 291). He could barely lift his arm high enough to put on some deodorant. (PX 7, pg. 291). Petitioner was taken off work for his right shoulder and an MR arthrogram was ordered for further evaluation. (PX 7 pp. 291, 295).

On August 26, 2021, Petitioner underwent neuropsychological testing with Dr. Derek C. Phillips at Sarah Bush. (PX 14, p. 1085). While the testing was completed August 26, 2021, Dr. Phillips report is dated September 14, 2021. (PX 14, p. 1085). Dr. Phillips conducted his testing and concluded that Petitioner met the criteria for "major neurocognitive disorder," but reported the etiology of his cognitive impairment was "unclear." (PX 14, p. 1093).

On September 17, 2021, Petitioner had a second CT of the brain without contrast, and interpreted to show no acute intercranial abnormality. (PX 21, p. 2002-2003).

Petitioner returned to Dr. Lee on October 6, 2021, and was continued off work due to his shoulder injury with the following restrictions "close to body lift, no overhead lift, limited outstretched and repetitive motion, desk duty." Dr. Lee found that "[t]his will probably be a permanent restriction." (PX 23 p. 2053). Petitioner was advised to return following a right shoulder MR arthrogram which had not been approved by Respondent. (PX 23 pg. 2053). Respondent never approved Petitioner's MR Arthrogram for his right shoulder.

Petitioner testified at trial that his right shoulder has continued to deteriorate, and now crackles and pops with limited range of motion. (T. 43). He is not able to hold his arm up very long, and would not be able to lift much weight with his arm. (T. 43). The MR arthrogram recommended by Dr. Lee was never approved or performed, and Petitioner did not return to Dr. Lee for further treatment for his right shoulder. (T. 50-51).

On October 12, 2021, Ms. Higgs called the neurology clinic and requested a letter for the insurance company. The Clinic reported that Ms. Higgs "[s]tates that she needs a letter stating that as a result of the fall, [Petitioner] had the stroke" and cerebellum bleeding. (RX 15, p. 9). In an addendum dated October 13, 2021, Nurse Eldridge wrote that "[t]he stroke and fall were likely not related. [Petitioner] had a head CT in December 2020 that also showed the old stroke, which mean[s] it occurred before that time." (RX 15, p. 8). Despite this rejection, Ms. Higgs would continue to ask the neurology clinic for a causation opinion in a new letter dated January 31, 2022. (RX 14, p. 1). There is no record of the neurology clinic ever changing its position on the etiology for Petitioner's condition. (PX 14).

On July 25, 2022, the Petitioner was referred to Dr. Rong Chen by his primary care physician, Dr. Martinez. (PX 29 pp. 2314-2317). Dr. Chen documented that Petitioner fell at work in November

2020 and that he “might have hit his head,” and reported developing intermittent headaches, dizziness, feeling off-balance and clumsy with his gait, more on the left side as well as a decline with memory and concentration. (PX 29, p. 2315). Dr. Chen’s report references that a CT of the brain was unremarkable and that an MRI of the brain showed microvascular disease and probable old punctate cerebellar lunar infarcts. (PX 29, p. 2315). The EEG showed slow waves, but no epileptiform discharge. (PX 29, p. 2315). On examination, Petitioner was alert, orientated to time, location, and self, his behavior was normal, his speech was clear, his language was intact, and there was no apparent anomalies in his eyes, nose and ears. (PX 29, p. 2316). Petitioner head was normocephalic and atraumatic. (PX 29, p. 2316). Dr. Chen provided an assessment of “cognitive decline and gait unsteadiness of unclear etiology.” (PX 29, p. 2317). He did not feel the MRI findings were the cause of Petitioner’s symptoms and referenced a small possibility of intermittent complex partial seizure. (PX 29, p. 2317). Dr. Chen recommended that Petitioner have EMU monitoring and return after completion. (PX 29, p. 2317).

Petitioner returned to Dr. Chen’s office on November 17, 2022. (PX 30, pp. 2318-2319). Petitioner was admitted for EMU, but the monitoring was negative. (PX 30, pg. 002319). Dr. Chen concluded that from a neurological point of view, he would not recommend any further investigation or suggest any special treatment. (PX 30, p. 2319). Mr. Higgs was advised to follow up as needed. (PX 30, p. 2319). No further treatment records for Petitioner’s neurological complaints were presented at hearing.

Section 12 Exams & Record Reviews

Petitioner attended a Section 12 examination with Dr. Fletcher on June 7, 2023 at the request of his attorney. (T. 40). Dr. Fletcher is board certified in occupational medicine. (PX 32, p. 2343). Based on his review of the records and examination of Petitioner, Dr. Fletcher diagnosed Petitioner with a traumatic brain injury and stroke-like event following his fall, and right shoulder injury which he believed to be causally related to the alleged work injury. (PX 31, p. 2323). As a result of these injuries, Dr. Fletcher opined that Petitioner will not be able to return to work. (PX 31, p. 2323). Following his evaluation, Dr. Fletcher sent Petitioner to Dr. Corby A. Bulp, a Clinical Neuropsychologist & Psychologist for baseline neuropsychological testing and to Dr. Edward Trudeau for EMG studies to rule out right brachial plexus injury and ulnar neuropathy. (PX 31, p. 2324). Dr. Fletcher understood Petitioner to have “struck his head and injured his shoulder in the fall.” (PX 31, p. 2323).

Dr. Edward Trudeau performed electrodiagnostic studies on July 10, 2023. (PX 36, pp. 2514-2528). Dr. Trudeau found evidence of ulnar neuropathy at the right elbow consistent with cubital tunnel syndrome and median neuropathy at the right wrist consistent with carpal tunnel syndrome, but no evidence of brachial plexopathy. (PX 36, pp. 2521-2522).

Dr. Bulp evaluated Petitioner on July 24, 2023. (PX 35, pp. 2514-2528). In his report, Dr. Bulp recorded that Petitioner and his wife reported “a fall from work caused a head injury on November 9, 2020, with continuing difficulties. (PX 35, p. 2500). Following his review of the records and evaluation of Petitioner, Dr. Bulp opined that Petitioner’s cognitive and functional decline took a major decline from the actual fall injury and appears to have accelerated post injury from medical complications and treatment related to his shoulder repair, attributing Petitioner’s surgical

complications to a mild vascular or stroke like dementia. (PX 35, p. 2511). Petitioner's impairments were more likely than not causally related to his work related traumatic brain injury. (PX 35, p. 2511).

Dr. James Hildebrandt responded to a letter from Petitioner's attorney on February 20, 2024, indicating that he had diagnosed Petitioner with a major neurocognitive disorder that he believed to be causally related to the work accident of November 9, 2020. (PX 3,7 p. 2529). Dr. Hildebrandt opined that he had a "strong opinion that [Petitioner] is permanently and totally disabled." (PX 37, p. 2529). Dr. Hildebrandt did not provide a history, review of medical records, or examination findings. (PX 37, p. 2529). Petitioner did not submit any records from Dr. Hildebrandt.

An Occupational Medicine Review was completed by Dr. Steven St. Clair, a board Certified Occupational Medicine physician at the request of New York Life for Petitioner's LTD claim. (PX 38, pp. 2532-2534). Dr. St. Clair did not record any of the contemporaneous medical records from PA Harminson or Dr. Martinez as part of his evaluation, nor the initial emergency department visit on December 15, 2020, the CT scans of the brain, or any of the neurological clinic records from Sarah Bush or Carle Clinic. (PX 38, pp. 2532-2533). Dr. St. Clair relied on the reports of Dr. Fletcher and Dr. Bulp, along with unsubmitted records from Dr. Hildebrandt and Dr. Angelo Domingo. (PX 38, pp. 2532-2533). Dr. St. Clair concluded that Petitioner went off work following a work-related traumatic brain injury on November 9, 2020, and opined that it was unlikely he would be able to return to work in any capacity in the future. (PX 38, p. 2534).

Dr. Richard Carroll conducted a record review on behalf of Respondent on April 9, 2025. (RX 4, pp. 1-4). Dr. Richard Carroll is board certified in internal medicine and cardiology. (RX 4; RX 5). Based on his review of the medical records, Dr. Richard Carroll concluded that there was no history of a head injury documented until December 15, 2020, and even then, no definitive history of a head injury or cardiac condition. (RX 4, pp. 3-4). Dr. Richard Carroll took issue with Dr. Fletcher's opinion, noting the only objective findings, a tiny lacunar infarct noted on the December 15, 2021 CT study, was more likely than not due to his hypertension and diabetes. (RX 4, pp. 3-4). Dr. Carroll deferred to the findings of Dr. Chen regarding the neurological condition, noting that Dr. Chen was unable to connect Petitioner's condition to the work injury. (RX 4, p. 4). In regard to Petitioner's cardiac treatment, Dr. Richard Carroll found no evidence of cardiac injury or subsequent cardiac treatment, which would be related to the work injury. (RX 4, p. 4).

Respondent also submitted the record review report from Dr. Elizabeth Carroll, a board certified neurologist and assistant professor of neurology at the University of Chicago. (RX 6, p. 1, RX 7, pg. 1). Dr. Elizabeth Carroll has an additional subspecialty board certification in epilepsy/EEG as well as neurocritical care through the American Board of Psychiatry and Neurology. (RX 6, p. 1). In her May 1, 2025 report, Dr. Elizabeth Carroll documented her review of medical records and accident reports dating back to Petitioner's November 9, 2020 work injury. (RX 6, p. 1). Dr. Elizabeth Carroll's review included copies of all the contemporaneous medical records, the neurological evaluations completed at Sarah Bush and Carle Clinic, as well as the CT and MRI imaging of the brain, as well as the reports/testimony of Dr. Fletcher and the neuropsychological testing completed by Dr. Phillips and Dr. Bulp. (RX 6, pp. 1-6). Based on her review of these materials, Dr. Elizabeth Carroll concluded there was no documented evidence of an injury to the head contemporaneous to this accident, specifically noting that one would expect

to see bruising at the site of the head site, behind the ears, or under the eyes if Petitioner sustained a head injury, as he was on Eliquis, a blood thinner at the time of his accident. (RX 6, p. 6). The December 15, 2020, CT study was appropriate at the first line imaging modality if there is concern for an acute traumatic brain injury, specifically in a patient who is on anticoagulation. (RX 6, p. 6). Individuals such as Petitioner who were on blood thinners are at a much higher risk for hemorrhagic contusion, subdural and epidural hematoma, intraparenchymal hemorrhages, and subarachnoid hemorrhage, and even mild head trauma may result in these pathologies, but there was no evidence of any of the aforementioned conditions on Petitioner's scan. (RX 6, p. 7). Given the lack of findings on CT scan of the head at this time, and symptoms/clinical course reported by the Petitioner, Dr. Elizabeth Carroll did not anticipate further neurologic workup to be warranted solely for the evaluation of possible traumatic brain injury related to the alleged injury. (RX 6, p. 7).

Dr. Elizabeth Carroll further opined that Petitioner's fall from standing would not have caused an acceleration/deceleration injury without a head strike. (RX 6, p. 7). If such an injury had occurred, one would anticipate additional imaging findings typical of this mechanism of injury, specifically coup contrecoup contusions, which results secondary to the high velocity movement of the brain moving from one side of the skull to the contralateral side of the skull, but there was no evidence of a coup contrecoup injury on the CT scan obtained on December 15, 2020. (RX 6, p. 7). Another typical imaging finding of high speech acceleration/deceleration injury is diffuse axonal injury, a shearing injury of the brain parenchyma, but Dr. Elizabeth Carroll found no evidence of such an injury in the two MRI reports or on her own review of the MRI imaging. (RX 6, p. 7). Finally, with regard to the EEG findings, Dr. Carroll opined there was no evidence of temporal lobe injury on any of the CT scan of the brain, nor any of the MRI scans obtained in the years following the incident, that would support Dr. Fletcher's opinions. (RX 6, p. 7).

Dr. Elizabeth Carroll opined that Petitioner has an undiagnosed progressive neurodegenerative disorder as evidenced by the clinical course described in the medical records and neuropsychology testing obtained. (RX 6, p. 8). Petitioner's rapid decline is typical for a progressive neurodegenerative disorder, possibly an unspecified dementia. (RX 6, p. 8). In regard to the right cerebellar lacunar stroke, this chronic appearing infarct was first seen on the head CT obtained in December 2020, and Dr. Elizabeth Carroll opined it is unrelated to this injury. (RX6,p.8). Stroke/microvascular disease, hypertension, and diabetes, are independent risk factors for vascular dementia. (RX 6, p. 8). Given the lack of reported head injury for the first month following the alleged work related event, lack of imaging or clinical exam findings suggestive of traumatic brain injury, EEG without evidence of increased risk for seizure, a clinical course that is not consistent with post-concussive syndrome and instead is concerning for an unrelated neurocognitive disorder, and multiple medications that have known side effects including cognitive impairment and fatigue, Dr. Elizabeth Carroll opined that the cognitive decline reported by Mr. Higgs is unrelated to any alleged head trauma related to his fall at work on November 9, 2020. (RX 6, p. 9).

Dr. Fletcher Deposition

The parties deposed Dr. Fletcher on December 4, 2024. (PX 34 p. 2359-2480). He testified that Petitioner could have sustained a traumatic brain injury caused by a direct blow to his head or by a quick acceleration movement of the head. (PX 34, pp. 2372-2373, 2386). Dr. Fletcher testified

that he understood that Petitioner had sustained a direct blow to his head during his fall. (PX 34, p. 2386).

On cross-examination, Dr. Fletcher testified that he had not reviewed the accident reports and witness statements taken at the time of the accident. (PX 34, p. 2406). Upon review of the same, he testified that there was no indication that Petitioner struck his head or sustained a quick acceleration injury. (PX 34, p. 2409). He testified that the initial medical records demonstrated a normal examination of the head without evidence of a head injury or a sudden acceleration injury. (PX 34 pp. 2411-2412). The first mention of any subjective complaints occurred on December 15, 2020, 37 days after the fall. (PX 34 p. 2437). Dr. Fletcher testified that the CT study obtained on that date did not confirm a traumatic brain injury. (PX 34 p. 2437).

Dr. Fletcher testified that the records provided indicate that Petitioner was on medications, which were known to cause side effects including diarrhea, fatigue. (PX 34, p. 2429). Dr. Fletcher testified he was not familiar with all of Petitioner's medications and could not comment on the side effects of all the medication. (PX 34, pg. 2430).

While Petitioner's physical examination did not show any neurological deficits, Dr. Fletcher opined that Dr. Martinez's note from January 28, 2021, documents classic symptoms related to a post-concussive event. (PX 34, p. 2447). However, he testified that Dr. Martinez did not find objective evidence of an injury on the CT scan and had not referred Petitioner to a neurologist prior to the right shoulder surgery. (PX 34, p. 2448-2449).

Dr. Fletcher testified that Petitioner's cardiac condition, specifically changes of microvascularization, could cause cognitive changes. (PX 34, p. 2455). Microvascular disease is a risk factor for dementia and stroke. (PX 34, p. 2462). The lacunar infarct found on the MRI of the brain is evidence of a stroke. (PX 34, p. 2463). Dr. Fletcher testified that it is possible that these findings are unrelated to this fall based on Petitioner's cardiovascular history. (PX 34, p. 2463).

CONCLUSIONS OF LAW

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

First, in regard to Petitioner's right shoulder injury, it is undisputed that Petitioner slipped and fell at work on November 9, 2020, landing with the full force of his body on his right shoulder when he hit the ground. As a consequence, the Petitioner sustained a right shoulder rotator cuff tear and degenerative superior labral tear, which required surgical intervention and time off work. On August 25, 2021, given Petitioner's ongoing post-surgical complaints, Dr. Lee recommended further evaluation in the form of a right shoulder MR arthrogram, which was never approved by Respondent and Petitioner discontinued care for his right shoulder. Petitioner testified to significant limitations, which demonstrated a significant decrease in his arm strength at trial, which is supported by the treating medical records and the severe permanent restrictions placed on Petitioner's right shoulder by Dr. Lee of "close to body lift, no overhead lift, limited outstretched and repetitive motion, desk duty."

Given that Petitioner had no pre-existing issues in his right shoulder, a chain of events analysis is sufficient here for Petitioner to prove his injury is work-related. The Arbitrator finds that the Petitioner has met his burden and, given the totality of the evidence, the credible testimony of the Petitioner, the medical evidence in the record, and the chain of events, the Arbitrator finds that Petitioner's current condition of ill-being in his right shoulder is causally related to his work injury on November 9, 2020.

Second, in regard to Petitioner's neurological complaints, contrary to Petitioner's trial testimony, there is no medical evidence of a head injury or neurological complaints until December 15, 2020, thirty-seven days after the accident. Despite Petitioner's testimony, the records show that he was neurologically intact following the accident and that there was no bruising on his head or subjective complaints consistent with his allegations in the record. This is supported by the two CT studies, the two MRI studies, and the EEG study that fail to document any objective findings of an acute injury. The only objective findings demonstrated a history of a prior stroke condition.

Additionally, Petitioner failed to present any medical opinions from a neurologist or neurosurgeon that he sustained a traumatic brain injury as the result of this accident. Petitioner relied on the opinions given by Dr. Fletcher, Dr. Bupp, Dr. St. Clair and Dr. Hildebrandt. Each of these physicians incorrectly believed that Petitioner struck his head at the time of his fall. There is simply no evidence of a head injury in the fall. Petitioner did not testify that he hit his head when he fell. Further, Petitioner did not report a head injury to his employer, to Mr. Richey his co-worker, or to his initial attorney when completing his first Application for Adjustment of Claim, for case number 20WC030752. Given that all of Petitioner's examining physicians relied on an inaccurate mechanism of injury in support of their findings, the Arbitrator is not persuaded by those opinions.

While Dr. Fletcher, an occupational medicine specialist, did offer some testimony that could support a compensable injury, when he hypothesized that Petitioner could have suffered a deceleration injury as a result of this accident, this hypothesis is not supported by Petitioner's treating records, as it is inconsistent with Petitioner's treating neurologists from Sarah Bush and Carle Clinic. Further, the explanation provided by Dr. Fletcher was rebutted by the report of Dr. Elizabeth Carroll, a board certified neurologist. Particularly compelling was Dr. Elizabeth Carroll's discussion on the lack of objective findings. Given that Petitioner was on a blood thinner at the time of his accident, her opinion there would have been some bruising bleeding on physical examination or the diagnostic imaging if there was a head injury is persuasive. As there was no such evidence in this case, just as there is no contemporaneous subjective complaints in the medical records, the Arbitrator finds that Petitioner has failed to meet his burden and prove by a preponderance of the evidence that his neurological issues are causally related to this 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?

Incorporating the above, the medical services provided to Petitioner for his right shoulder injury through October 6, 2021, were reasonable, necessary, and related to his work injury. The Arbitrator further finds the emergency department visit on December 15, 2021, and the pre-operative cardiac

evaluation to be reasonable, necessary, and related. However, following the December 15, 2021, evaluation, none of the neurological bills are causally related to this case.

In review of the bills submitted, the Arbitrator finds only four dates of service remain unpaid: (1) A September 26, 2022 evaluation from Carle/Graham Rowell Huesmann – which is denied based on Petitioner's failure to provide a corresponding record; (2) The July 10, 2023, bills from Dr. Trudeau and Memorial Care for the EMG studies – which is denied as those studies were ordered as part of Dr. Fletcher's independent medical examination and not by a treating physician; (3) An April 8, 2022, bill from Charleston East Family practice – which is denied based on Petitioner's failure to provide a corresponding record; and (4) November 1, 2022 labs bill from Sarah Bush – which also denied as unnecessary and unrelated.

Accordingly, the Arbitrator finds that Respondent has paid all appropriate charges for all reasonable and necessary medical services.

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

Incorporating the above, the Arbitrator finds that Respondent is liable for the payment of TTD benefits of \$824.38/week for the 45 week period of November 10, 2020 through October 6, 2021. Respondent shall receive credit for \$61,408.08 in TTD paid on this case. (AX 1).

As Petitioner reached maximum medical improvement for his right shoulder shortly after the award of long term disability ("LTD") benefits on May 8, 2021, the Respondent shall reimburse Petitioner for LTD benefits paid by New York Life from May 8, 2021 through October 6, 2021, so that Petitioner can reimburse New York Life directly for this overpayment period, as stipulated by the parties at hearing. (PX 45; RX 11).

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:** An AMA impairment report/rating was not submitted into the record. Therefore, the Arbitrator lends no weight to this factor.

ii. **Occupation:** Petitioner was a mixer operator at the time of his accident and never returned to work for Respondent. Petitioner lost his occupation. Arbitrator places significant weight on this factor.

iii. **Age:** Petitioner was 59 years old at the time of his work injury. The Arbitrator places some weight on this factor.

iv. **Earning Capacity:** Petitioner never returned to work for Respondent, and there is no evidence that Petitioner was given vocational assistance as required by the Act. The Arbitrator places some weight on this factor.

v. **Evidence of disability corroborated by the treating medical:** Petitioner sustained a right shoulder rotator cuff tear and degenerative superior labral tear, which required surgical intervention. Petitioner was given severe permanent restrictions for his right shoulder by his treating surgeon of “close to body lift, no overhead lift, limited outstretched and repetitive motion, desk duty.” Petitioner’s testimony of severe disability in his right shoulder is supported by the treating medical. The Arbitrator places the majority of weight on this factor.

Based on the totality of the evidence presented, the Arbitrator awards permanent partial disability benefits of \$741.94/week for the period of 400 weeks, as Petitioner sustained a loss of occupation resulting in 80% loss of use to his person as a whole.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	22WC002504
Case Name	Adam Rupp v. City of Peoria
Consolidated Cases	24WC014716
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0053
Number of Pages of Decision	9
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Adam Casson

DATE FILED: 2/23/2026

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ADAM RUPP,

Petitioner,

vs.

NO: 22 WC 002504

CITY OF PEORIA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and 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.

Permanent Disability

The Commission views the evidence differently with respect to Section 8.1b(b) factors (iii) and (v).

(iii) the age of the employee at the time of the injury

Petitioner was 40 years of age at the time of the work-related accident. He returned to full-duty work in his pre-injury job as a Firefighter/ Engineer two weeks after contracting COVID per the fire department quarantine protocol. The arbitrator placed greater weight on this factor noting that Petitioner had "many years, if not decades of work life remaining." The Commission finds that there was no evidence presented that Petitioner was disabled in any way that impacted his employment and for this reason less significance should be given to Petitioner's age or work life expectancy.

(v) evidence of disability corroborated by treating medical records

Petitioner did not seek any medical treatment following his COVID exposure and testing positive for COVID himself. Petitioner testified that he has experienced some lingering exhaustion and gets short of breath faster. The Arbitrator gave greater weight to this factor. The Commission finds that since there is no evidence of disability corroborated by the treating medical records as specified in Section (v) that no weight should be given to this factor pursuant to the Act.

Having weighed the evidence and analyzed the Section 8.1b(b) factors, the Commission hereby modifies the Arbitrator's award of permanent partial disability and finds Petitioner sustained a 1% loss of use of the person as a whole under Section 8(d)2.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION THAT Respondent shall pay to Petitioner the sum of \$937.11 per week for 5 weeks, because the injuries sustained caused the loss of 1% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,194.63 per week for a period of 2 weeks, commencing January 26, 2022, through February 9, 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 interest under §19(n) of the Act, if any.

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

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

February 23, 2026

1-13-26
SJM/msb
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	22WC002504
Case Name	Adam Rupp v. City of Peoria
Consolidated Cases	24WC014716
Proceeding Type	Request for Hearing
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Adam Casson

DATE FILED: 8/8/2025

*/s/ Maureen Pulia, Arbitrator*Signature**INTEREST RATE WEEK OF AUGUST 5, 2025 3.98%**

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

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
 ARBITRATION DECISION
 NATURE AND EXTENT ONLY**

ADAM RUPP,
 Employee/Petitioner

Case # **22** WC **2504**

v. Consolidated cases

CITY OF PEORIA,
 Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/24/25**. By stipulation, the parties agree:

On the date of accidents, **1/26/22**, 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 **\$93,181.50**, and the average weekly wage was **\$1,791.95**.

At the time of injury, Petitioner was **40** years of age, **married** with **6** dependent children.

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

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

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

ORDER

The parties stipulated during the hearing that the Respondent shall pay petitioner 2 weeks of temporary total disability benefits at the rate of \$1,194.63 for the period 1/26/22 through 2/9/22.

Respondent shall pay Petitioner permanent partial disability benefits of \$937.11/week for 12.5 weeks, because the injuries sustained caused the 2.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

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

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



Signature of Arbitrator

AUGUST 8, 2025

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

This case was heard in consolidation with case 24WC14716. That case involves an injury to the petitioner's right eye. The Findings of Fact, and Conclusions of Law with respect to that case have been published in a separate decision. The sole issue in both cases is the nature and extent of the petitioner's injury.

Petitioner, a 40 year old Engineer, sustained an accidental injury due to COVID exposure on 1/26/22 (22WC2504), that arose out of and in the course of his employment by respondent. Petitioner has worked for respondent for 18 years, and has been an Engineer for the past 9 years. Petitioner's duties as an Engineer include driving to all the calls, as well as checking all the medical equipment and fire suppression equipment. Petitioner also provides care to all patients and stabilizes them until an EMT arrives to transport. Petitioner is also responsible at times for fighting fires and climbing ladders, if needed. On or about 1/26/22 petitioner was also required to appear in emergency care centers (i.e., Urgo Centers), if called on to provide medical assistance.

On 1/26/22 petitioner sustained an accidental injury that arose out of and in the course of his employment by respondent as a result of his exposure to COVID (22WC2504). On this date, petitioner responded to an EMS call at an OSF Urgo for a patient that was having severe respiratory issues and other COVID type symptoms. The patient was coughing and sneezing a lot, and was taking down her mask, as well as sneezing and coughing on him and his fellow firefighters while they were trying to work on her. Petitioner testified that he had direct exposure to the patient.

During the COVID process, the Supervisor Chief of the City of Peoria Fire Department was in charge of tracking all the medical calls that were COVID positive, and putting all the information in a database. Based on this information petitioner was notified that he was exposed to a patient with COVID. Shortly thereafter, petitioner took a COVID test, and tested positive.

After testing positive for COVID, petitioner was notified by his immediate supervisor that he was being removed from active duty immediately. The respondent's policy was that all employees who tested positive for COVID were taken off work for 14 days. Petitioner was not paid workers' compensation benefits for his time off, and was never paid any money from respondent for his missed time due to his exposure to COVID while working for respondent. Petitioner testified that he was allowed to use his personal and sick time while he was off for 14 days.

Petitioner testified that while he was off work he experienced flu-like symptoms that included coughing, a fever, shortness of breath, a lot of exhaustion, and feeling pretty rundown. Petitioner did not seek any medical treatment for his symptoms.

Petitioner testified that since the exposure on 1/26/22 he has experienced some lingering exhaustion. He also gets short of breath a lot faster when going up and down stairs, climbing ladders, and doing general work. He testified that he just feels really rundown. Petitioner has not lost any time from work as a result of these symptoms.

WHAT IS THE NATURE AND EXTENT OF THE INJURY?

In support of the Arbitrator's decision relating to the nature and extent of the injury the Arbitrator makes the following findings:

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

With regard to subsection (i) of §8.1b(b), the arbitrator notes that neither party submitted an impairment rating. Therefore, no weight is given to this factor.

With regard to subsection (ii) of Section 8.1b (b), the occupation of the injured employee, the Arbitrator notes petitioner was employed as an Engineer at the time of the accident. After petitioner returned from work after his mandatory 14-days off, he returned to his regular duty job and continued working his regular duty job until he sustained another accidental injury on 5/30/24 (24WC14716). Therefore, the arbitrator gives lesser weight to this factor.

With regard to subsection (iii) of Section 8.1b (b), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 40 years old on the date of accident. Given his age, petitioner has many years, if not decades, of work life remaining. Therefore, the Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of Section 8.1b (b), Petitioner's future earning capacity, the petitioner failed to offer any evidence to support a decrease in his future earning capacity. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of Section 8.1b (b), the Arbitrator notes that following his COVID exposure and testing positive for COVID himself, petitioner did not seek any medical treatment, but since returning to work, has experienced some lingering exhaustion, as well as getting short of breath a lot faster when going up and down stairs, climbing ladders, and doing general work. He testified that he just feels really rundown. Therefore, the Arbitrator gives greater weight to this factor.

Based on the above, as well as the credible evidence, the respondent shall pay petitioner permanent partial disability benefits of \$937.11/week for 12.5 weeks, because the injuries sustained caused the 2.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	24WC014716
Case Name	Adam Rupp v. City of Peoria
Consolidated Cases	22WC002504
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	26IWCC0054
Number of Pages of Decision	10
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Adam Casson

DATE FILED: 2/23/2026

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

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

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ADAM RUPP,

Petitioner,

vs.

NO. 24 WC 014716

CITY OF PEORIA,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of nature and 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.

Permanent Disability

The Commission views the evidence differently with respect to Section 8.1b (b) factors (iii) and (v).

(iii) the age of the employee at the time of injury

Petitioner was 42 years old at the time of the work-related accident which affected his right eye. Petitioner testified that he missed no time from his employment as a result of this injury. The Arbitrator placed greater weight on this factor noting that Petitioner had many years, if not decades of work life remaining. The Commission finds that there was no evidence presented that Petitioner was disabled by the eye injury in any way that impacted his employment and for this reason less significance should be given to Petitioner's age or work life expectancy.

(v) evidence of disability corroborated by the medical records

Petitioner had only one medical appointment following the work-related injury to his right eye. On June 7, 2024 Petitioner sought treatment at the Illinois Eye Center with a history of something falling into his eye on May 30, 2024, when he was at work. On examination there was no foreign body in the eye. Petitioner reported a yellow spot in the sclera of his eye which had not been there before.

The record shows that Petitioner was diagnosed with pinguecula which is a degenerative yellow discoloration associated with sun exposure. There is no documentation to support this condition as being related to the May 30, 2024, work accident.

The record further shows that Petitioner was also diagnosed with bilateral keratoconjunctive sicca. This medical terminology describes dry eye in both right and left eye. Petitioner was counseled that this condition can be exacerbated with antihistamine use. He was directed to discontinue use of ciprofloxacin, and to take occasional breaks from day and night contact lenses. There was no documentation in the medical records to link the condition of ill-being in the right eye to the work-related accident of May 30, 2024. The Arbitrator gave greater weight to this factor.

The Commission gives some weight to this factor.

The Commission finds that in light of the transient nature of the irritation to the right eye and lack of disability that the Arbitrator's award of loss of 5% use of the right eye should be modified to 1% loss of use of the right eye.

Having weighed the evidence and analyzed Section 8.1b(b) factors the Commission finds that Petitioner sustained 1% loss of use of the right eye, as provided in Section 8(e) 13 of the Act.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$1,024.87 per week for a period of 1.62 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the loss of use of 1% of the right eye.

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

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

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

February 23, 2026

d: 1/13/26

SJM/msb

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	24WC014716
Case Name	Adam Rupp v. City of Peoria
Consolidated Cases	22WC002504
Proceeding Type	Request for Hearing
Decision Type	Corrected Decision
Commission Decision Number	
Number of Pages of Decision	6
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Adam Casson

DATE FILED: 9/3/2025

/s/Maureen Pulia, Arbitrator
Signature

INTEREST RATE WEEK OF SEPTEMBER 3, 2025 3.88%

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
 CORRECTED ARBITRATION DECISION
 NATURE AND EXTENT ONLY**

ADAM RUPP,
 Employee/Petitioner

Case # **24** WC **14716**

v.

Consolidated cases:

CITY OF PEORIA,
 Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/24/25**. By stipulation, the parties agree:

On the date of accidents, **5/30/24**, 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 **\$94,093.20**, and the average weekly wage was **\$1,809.48**.

At the time of injury, Petitioner was **42** years of age, *married* with **5** dependent children.

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

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

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$1,024.87/week for 8.1 weeks, because the injuries sustained caused the 5% loss of the right eye, as provided in Section 8(e)13 of the Act.

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

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



Signature of Arbitrator

SEPTEMBER 3, 2025

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

This case was heard in consolidation with case 22WC2504. That case involves an exposure to COVID. The Findings of Fact, and Conclusions of Law with respect to that case have been published in a separate decision. The sole issue in both cases is the nature and extent of the petitioner's injury.

Petitioner, a 42 year old Engineer, sustained an accidental injury to his right eye on 5/30/24 (24WC14716), that arose out of and in the course of his employment by respondent. Petitioner has worked for respondent for 18 years, and has been an Engineer for the past 9 years. Petitioner's duties as an Engineer include driving to all the calls, as well as checking all the medical equipment and fire suppression equipment. Petitioner also provides care to all patients and stabilizes them until an EMT arrives to transport. Petitioner is also responsible at times for fighting fires and climbing ladders, if needed

On 5/30/24 petitioner sustained an accidental injury to his right eye that arose out of and in the course of his employment by respondent (24WC14716). On this day petitioner was to pull the engine, run it through the pump and check all the valves, flush the water, go through the equipment, run the saws, and other related tasks. As he was operating the pump a gust of wind blew up, and a chunk of metal flew off the pump handle and lodged in his right eye. When this happened, petitioner experienced immediate pain in the corneal of his right eye. His right eye was watering, and he had some issues seeing out of it. He immediately started irrigating the eye and flushing it.

Given that petitioner has a friend who is an eye doctor up in the LaSalle/Peru area, petitioner sent him some pictures and talked to him over the phone. His friend gave him some things to monitor. Petitioner's right eye kept swelling shut and was very watery. He was also having trouble seeing out of it, and he was seeing floaters. He testified that there was a yellow chunk of something in the right eye that was not clearing up.

Eventually, his friend told him he needed to see a specialist, and not just a regular eye doctor. As a result, his friend referred petitioner to the Illinois Eye Center, where petitioner presented on 6/7/24.

On 6/7/24 petitioner presented to Dr. Elizabeth Eyler Allen at Illinois Eye Center for a foreign object in his right eye. He reported that his symptoms had been constant and worsening with reading and driving since 5/30/24. He reported that he had been using some eye drops. He also complained of swelling in the right eye, and light sensitivity. Following an examination, petitioner was diagnosed with Pinguecula and Keratoconjunctivitis sicca. Dr. Allen recommended sun/wind protection, occasional breaks from night and day contact lenses, and to monitor for inflammation. Dr. Allen told petitioner to discontinue use of Ciprofloxacin, and prescribed PF artificial tears. Petitioner sought no further treatment for his right eye, and missed no time from work as a result of this injury.

Petitioner testified that currently he still experiences right eye irritation from time to time, and his right eye seems a little bit extra sensitive to air, etc. Petitioner also testified that most of the yellow spot in his right eye has cleared up. He noted that since the injury on 5/30/24 he uses prescription eye drops more frequently. He testified that they are special contact drops, that have a little bit higher viscosity than the “Artificial Tears”.

WHAT IS THE NATURE AND EXTENT OF THE INJURY?

In support of the Arbitrator’s decision relating to the nature and extent of the injury the Arbitrator makes the following findings:

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

With regard to subsection (i) of §8.1b(b), the arbitrator notes that neither party submitted an impairment rating. Therefore, no weight is given to this factor.

With regard to subsection (ii) of Section 8.1b (b), the occupation of the injured employee, the Arbitrator notes petitioner was employed as an Engineer at the time of the accident. Petitioner lost no time as a result of the injury, and returned to his regular duty job following the injury on 5/30/24. Therefore, the arbitrator gives lesser weight to this factor.

With regard to subsection (iii) of Section 8.1b (b), the age of the employee at the time of the injury, the Arbitrator notes that Petitioner was 42 years old on the date of accident. Given his age, petitioner has many years, if not decades, of work life remaining. Therefore, the Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of Section 8.1b (b), Petitioner’s future earning capacity, the petitioner failed to offer any evidence to support a decrease in his future earning capacity. Therefore, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of Section 8.1b (b), the Arbitrator notes that following the injury on 5/30/24 petitioner experienced immediate pain in the corneal of his right eye. During the next week, petitioner’s right eye kept swelling shut and was very watery. He also had trouble seeing out of it, and was seeing floaters. Petitioner also noted that there was a yellow chunk in the right eye that was not clearing up. Petitioner then saw an eye specialist at Illinois Eye Center for a foreign object in his right eye. He reported that his symptoms had been constant and worsening with reading and driving since 5/30/24. He also reported that he had been using

some eye drops. He complained of swelling in the right eye, and light sensitivity. Following an examination, petitioner was diagnosed with Pinguecula and Keratoconjunctivitis sicca. Dr. Allen recommended sun/wind protection, occasional breaks from night and day contact lenses, and to monitor for inflammation. Dr. Allen told petitioner to discontinue use of Ciprofloxacin, and prescribed PF artificial tears. Petitioner sought no further treatment for his right eye, and missed no time from work as a result of this injury.

Petitioner testified that currently, he still experiences right eye irritation from time to time, and his right eye seems a little bit extra sensitive to air, etc. Petitioner also testified that most of the yellow spot in his right eye has cleared up. He noted that since the injury on 5/30/24 he uses prescription eye drops more frequently. He testified that they are special contact drops, that have a little bit higher viscosity than “Artificial Tears”.

Based on the above, as well as the credible evidence, the arbitrator finds the Respondent shall pay petitioner permanent partial disability benefits of \$937.11/week for 8.1 weeks, because the injuries sustained caused the 5% loss of the right eye, as provided in Section 8(e)13 of the Act.

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	12WC034686
Case Name	Teresa Mroczko v. Janitorial Services Inc
Consolidated Cases	
Proceeding Type	Remand
Decision Type	Commission Decision
Commission Decision Number	26IWCC0055
Number of Pages of Decision	4
Decision Issued By	Stephen Mathis, Commissioner, Stephen Mathis, Commissioner

Petitioner Attorney	Jordan Browen, Matthew Belcher
Respondent Attorney	Craig Bucy

DATE FILED: 2/26/2026

/s/Stephen Mathis, Commissioner

Signature

DISSENT

/s/Stephen Mathis, Commissioner

Signature

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Teresa Mroczko,

Petitioner,

vs.

No. 12 WC 34686

A & R Janitorial Services, Inc.,

Respondent.

DECISION AND OPINION ON REMAND

This matter comes before the Commission on second remand from the Circuit Court. The Circuit Court reversed the Commission's decision, which had affirmed Arbitrator Elaine Llerena's order approving a settlement contract and denying Aleksy Belcher's Petition for Attorney's Fees. The Circuit Court remanded the matter to the Commission "with instructions to adjudicate Belcher's Fee Petition pursuant to Section 16 and 16(a) of the Act and Section 9080.10 of its regulations. Because we hold that the entire \$647,000.00 in A&R's payments for Mroczko's benefits are subject to the Commission's exclusive original jurisdiction, the Commission must also ensure that any other attorneys' fee taken from any part of this \$647,000.00, including by Schiff Gorman and Costa Ivone, are not in violation of the Act."

Petitioner Mroczko's workers' compensation claim was never tried before the Commission. Multiple proceedings were brought in the Circuit Court. Section 5(b) of the Act provides:

"Where the injury or death for which compensation is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some person other than his employer to pay damages, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act...In the event the employee or his personal representative fails to institute a proceeding against such third person at any time prior to 3 months before such action would be barred, the employer may in his own name or in the name of the employee, or his personal representative, commence a proceeding against such other person for the recovery of damages on account of such injury or death of the employee, and out of any amount recovered the employer shall pay over to the injured employee or his personal representatives all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act..." 820 ILCS 305/5(b).

Pursuant to this provision of the Act, Respondent A & R Janitorial Services, Inc., by stepping into Petitioner's shoes, obtained an \$850,000.00 settlement in a third-party action. After deducting the workers' compensation benefits paid to Petitioner, and Respondent's attorney's fees

and costs, a balance remained. Respondent did not remit the balance to Petitioner, as the workers' compensation claim was still pending. Petitioner then sued Respondent for conversion (theft) before the Circuit Court of Cook County under case 2019L0005733. The Circuit Court in the conversion action granted Respondent's motion for summary judgment and denied Petitioner's cross-motion for summary judgment, allowing deduction of Respondent's attorneys' fees from the 3rd party recovery. Shortly thereafter, the parties entered into a settlement. Ultimately, on second judicial review, the Circuit Court set aside the Decision of the Commission and found that the Commission has original exclusive jurisdiction over all \$647,000.00 in workers' compensation benefits A&R paid to or on behalf of Petitioner (including the \$373,262.81 paid previously and the \$273,737.19 lump sum payment), as well as original exclusive jurisdiction to adjudicate Attorney Belcher's fee petition.

The Commission finds, consistent with the stipulations of the parties and the evidence introduced, that a deduction of \$373,262.81 from the \$647,000.00 for undisputed benefits paid to Petitioner was not subject to any further fees pursuant to §16a (D) and (E) of the Act which disallow attorney's fees on undisputed payments. The Commission must then determine the appropriate fee on the remaining \$273,737.19. Consistent with the remanding Order of April 3, 2025, the funds are under the jurisdiction of the Commission.

No party has broken down the \$273,737.19. No amount for PPD has been awarded to Petitioner, and no evidence was introduced that she reached MMI or returned to work. Based upon the statements of the parties, Petitioner was receiving benefits at the time of the settlement, and may have been eligible for a future surgical procedure. The Respondent previously agreed, in the settlement contract in the personal injury case, that it anticipated that it might pay out more than \$850,000.00 in workers' compensation benefits after settling the personal injury case. The Commission therefore considers the full \$273,737.19 to represent benefits recoverable under the Act.

The Commission considers the usual factors of a quantum meruit award: (1) time and labor required; (2) attorneys' skill and standing; (3) nature of the cause; (4) novelty and difficulty of the subject matter; (5) attorney's degree of responsibility in managing the case; (6) usual and customary charge for the type of work in the concerned community; and (7) benefits resulting to the client. *DeLapaz v. Selectbuild Construction, Inc.*, 394 Ill. App. 3d 969, 973, 917 N.E.2d 93, 334 Ill. Dec. 496 (2009). The Commission also applies its expertise in the fees and rates of attorneys practicing before it, as well as its knowledge of the time required to handle claims before the Commission. *F.H. Prince & Co. v. Towers Financial Corp.*, 275 Ill. App. 3d 792, 656 N.E.2d 142 (1st Dist. 1995). The attorneys at Aleksy Belcher, LLC, are of significant skill and standing; the claim was for workers' compensation benefits; the matters were not unique within workers' compensation; and the matter required discovery and evidence depositions, but no hearing was held.

The firm of Costa Ivone, LLC, has both claimed a standard Commission approved contingency fee agreement, and an Affidavit of Attorney's Fees showing 99.75 hours expended in this matter. The contingency fee agreement between Costa and Petitioner remains in effect and the Commission relies on this agreement.

Finally, the Commission considers the billable hour rates for attorneys practicing before the Commission during the period between October 5, 2012 and October 17, 2016. The Commission's experience with that issue leads it to conclude that attorney time with the skill and standing of Belcher should be billed at \$200 per hour.

Reviewing the hours presented by Aleksy Belcher, LLC, the firm has submitted in excess of 150 hours. Costa Ivone, LLC, objects to 41.49 hours as relating to the third-party claim and argues that some of these hours should be paid as administrative time versus attorney time. The Commission agrees. The Commission also excludes the time used to recover TTD, for which \$900 in fees was already paid, and any time after the termination of the attorney-client relationship. Based on the totality of the record, the Commission finds that Belcher is entitled to 75 hours at \$200 per hour for a total of \$15,000.00 in attorneys' fees.

The Act provides that attorney's fees for death, total disability, and partial disability benefits recovered are capped at 20% of 364 weeks of permanent total disability benefits. The date of accident was August 17, 2012, and the AWW was \$455.51. Based upon that date of injury, the minimum permanent total disability benefit rate was \$485.80 pursuant to Section 8(b)4.1. Therefore, 20% of 364 payments of \$485.80 would be \$35,366.24. However, the Commission is permitted to allow further fees up to 20% of the amount recovered if the circumstances permit. In this matter, 20% of the \$273,737.19 recovered would be \$54,747.44. Petitioner, by signing a distribution agreement, has agreed to a fee of \$45,000.

The Commission acknowledges the \$45,000.00 fee agreed to by Petitioner pursuant to Section 16a(B), and finds that this fee is not in violation of the Act. Costa Ivone, LLC, being in possession of all funds, are instructed to distribute \$15,000.00 to Aleksy Belcher, LLC, upon finality of this Order.

IT IS THEREFORE ORDERED BY THE COMMISSION that Aleksy Belcher's petition for attorney's fees is granted in the sum of \$15,000.00.

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

February 26, 2026

AHS-KAD
d-1/13/2026
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/s/Amylee H. Simonovich
Amylee H. Simonovich

/s/Kathryn A. Doerries
Kathryn A. Doerries

DISSENT

I respectfully dissent. I would find that the Commission lacks continuing jurisdiction in this matter. See *Alvarado v. Industrial Comm'n*, 216 Ill. 2d 547 (2005); *Daugherty v. Industrial Comm'n*, 99 Ill. 2d 1 (1983).

/s/Stephen J. Mathis
Stephen J. Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	23WC016234
Case Name	Insurance Compliance v. Kids Teen Rider
Consolidated Cases	
Proceeding Type	Notice of Non-Compliance
Decision Type	Commission Decision
Commission Decision Number	26IWCC0056
Number of Pages of Decision	11
Decision Issued By	Stephen Mathis, Commissioner

Petitioner Attorney	Megan Murphy
Respondent Attorney	Victoria Pipkin

DATE FILED: 2/26/2026

/s/Stephen Mathis, 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

Illinois Department of Insurance,

Petitioner,

vs.

No. 23 WC 016234
20 INC 00184

Kids Teen Rider, Demitra Joseph Bell, Tiffany
Stephens, Kenneth Stephens, Naketha Richard-
Kerr, Taye Im, Sara Pewett, Karen Ross, Gloria
Andrew, Jasmine Bell, Demitra C. Bell,
Individually, and as Officers,

Respondents.

DECISION AND OPINION REGARDING INSURANCE COMPLIANCE

Petitioner, the Illinois Department of Insurance (Insurance Compliance Division), brings this action, by and through the Office of the Illinois Attorney General, against the above-captioned Respondents, alleging violations of Section 4(a) of the Workers' Compensation Act (the Act) and Section 9100.90 of the Rules Governing Practice Before the Illinois Workers' Compensation Commission (the Rules), codified as Title 50 of the Illinois Administrative Code, Chapter 6. Proper and timely notice was given to Tiffany Stephens, Kenneth Stephens, Gloria Andrews, Naketha Richard, Taye Im, and Karen Ross.

An Insurance Compliance Hearing on the Merits was held before Commissioner Stephen J. Mathis on October 7, 2025, in Chicago, Illinois. Respondents Demitra Joseph Bell, Tiffany Stephens, Kenneth Stephens, Jasmine Bell, and Demitra C. Bell were not present at the hearing. Tiffany Stephens, individually and as an officer of Kids Teen Rider, was personally served on May 19, 2025, by AG Investigator Michael Cadman #111. (PX2). Kenneth Stephens individually and as an officer of Kids Teen Rider was personally served by Officer Michael Cadman #111 on May 15, 2025. There was negative service reported on Jasmine Bell, Demitra Joseph Bell, and Demitra C. Bell. Efforts at service on Respondent Demitra Joseph Bell, individually and as president of Respondent Kids Teen Rider were terminated at the direction of the Illinois Assistant Attorney General as she was actively evading service.

Respondents Naketha Richard-Kerr, Taye Im, Gloria Andrews and Karen Ross stipulated at hearing that they were all properly served. Respondent Sara Pewett was determined to reside out of state and was not served. Gloria Andrews and Karen Ross were present at hearing and represented by counsel.

The Illinois Department of Insurance seeks reimbursement for payment made by the Injured Workers' Benefit Fund to an employee of Respondent in case number 19 WC 022539 in the amount of \$7,670.65. The Illinois Department of Insurance is additionally proceeding under Section 4(d) of the Act and Section 9100 of the Rules seeking penalties totaling \$2,894,170.65 for 5,773 days of noncompliance.

Antonio Smith, an Investigator for the Illinois Department of Insurance, testified as a witness at the non-compliance hearing that an investigation into Kids Teen Rider was initiated in 2008 (T17) following a report of an injured worker. A Notice of Noncompliance was sent to Respondent Demitra J. Bell (PX3) at 1240 Iroquois Avenue, Naperville, Illinois 60563, on August 4, 2020. The notice sent September 1, 2020, was for an informal conference between the Department of Insurance and Respondent to attempt to resolve differences. There was no appearance by any Respondent at the informal meeting. The Commission notes that the 2008 date of initiation was likely either a misstatement by Investigator Smith or a transcription error.

It is unclear from the sworn testimony and the documentary evidence adduced at trial what efforts if any were made by Petitioner Illinois Department of Insurance to bring Respondents into compliance between 2008 and 2019. The testimony of Antonio Smith references the initiation of an investigation in 2008 (T17) following the report of a work accident. The Commission notes that the noncompliance period appears to have commenced in 2008. There is no evidence presented at hearing, however, to support any ongoing investigation by the Illinois Department of Insurance commencing prior to the April 2019 work-related accident.

Respondents' uninsured status came to the attention of the Commission following the work-related accident which occurred on April 22, 2019, which resulted in injuries to an employee who was driving a van for Kids Teen Rider. The matter entitled *Sally Belae v. Kids Teen Rider, Inc. and IWBF* (19 WC 022539) was heard on September 12, 2023, and an award made which was subsequently paid by the Injured Workers' Benefit Fund in the amount of \$7,670.65 on February 25, 2025. (PX11, Page 2).

As part of its investigation, the Illinois Department of Insurance made an inquiry to the National Council on Compensation Insurance (NCCI) to determine whether Respondent Kids Teen Rider carried workers' compensation insurance during the time period reflected in PX7, Page 1, i.e. March 24, 2008, through April 22, 2025. A certified affidavit signed by Topaz Bertino of NCCI dated April 23, 2025, was entered into evidence. The NCCI reported that Respondent Kids Teen Rider did not carry workers' compensation insurance from March 24, 2008, through October 16, 2013; from October 18, 2014, through December 15, 2015; or from December 17, 2016, through April 22, 2025. The NCCI report reflected that Respondent did have workers' compensation insurance commencing October 17, 2013, that

was cancelled on March 5, 2014, and for a period commencing December 16, 2015, that policy was canceled on November 2, 2016. (PX7, Page 2).

Petitioner Department of Insurance offered into evidence a certified affidavit from Maria Sarli-Dehlin of the Illinois Workers' Compensation Office of Self-Insurance Administration (PX8) verifying that a search of the records of the Office of Self Insurance was conducted for the period commencing March 24, 2008, through April 22, 2025. The search revealed that no certificate of approval to self-insure was issued by the Illinois Workers' Compensation Commission to Respondent Kids Teen Rider.

On March 21, 2008, Demitra Bell as president of Kids Teen Rider filed Articles of Incorporation with the Illinois Secretary of State that listed himself as Registered Agent. He further identified himself, Tiffany Stephens, and Kenneth Stephens as members of the Board of Directors. (PX6, Page 22-23).

An Annual Report was filed by Demitra J. Bell as President of Kids Teen Rider on March 24, 2008, listing himself as President, Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer, and Gloria Andrews, Karen Ross and Demitra C. Bell as Directors. (PX6, Page 13).

On July 21, 2009, Demitra J. Bell filed Articles of Amendment with the Secretary of State which identified the corporate officers of Kids Teen Rider as Demitra J. Bell, President and Treasurer, and Tiffany Stephens, as Vice President and Secretary. The Board of Directors were listed as Naketha Richard-Kerr, Taye Im, and Sara Pewett. (PX6, Page 24-27). In a separate filing, on January 27, 2009, Demitra J. Bell identified Tiffany Stephens, Kenneth Stephens, and Demitra Bell as Directors. (PX6, Page 55).

On July 21, 2009, Tiffany Stephens, as President of Kids Teen Rider filed an Application to Adopt an Assumed Corporate Name, "Sistahood", with the Illinois Secretary of State which would remain in effect until March 1, 2020. This is the only filing that identifies Tiffany Stephens as President.

On April 6, 2010, Demitra J. Bell filed an Annual Report identifying himself as President, Tiffany Stephens as Secretary, and Taye Im, Naketha Kerr, and Sarah Pewett as Directors of Kids Teen Rider. (PX6, Page 54).

On February 15, 2011, Demitra J. Bell filed an Annual Report on behalf of Kids Teen Rider identifying himself as President, Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer, and Taye Im, Naketha Kerr, and Sarah Pewett as Directors. (PX6, Page 52).

On February 28, 2013, Demitra J. Bell filed an Annual Report on behalf of Kids Teen Rider identifying himself as President, Tiffany Stephens as Secretary, and Demitra J. Bell as Treasurer. Gloria Andrews, Karen Ross, and Sarah Pewett were listed as Directors. (PX6, Page 48).

On March 18, 2014, Demitra J. Bell filed an Annual Report identifying himself as

President, Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer, and Gloria Andrews, Karen Ross, and Sarah Hewitt as Directors of Kids Teen Rider. (PX6, Page 44).

On March 24, 2015, Demitra J. Bell filed an Annual Report which identified Demitra J. Bell as President, Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer, and Gloria Andrews, Sarah Pewett, and Karen Ross as Directors. (PX6, Page 42).

On August 6, 2016, Demitra J. Bell filed Amended Articles of Incorporation for Kids Teen Rider which identified himself as President, Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer, and Gloria Andrews, Jasmine Bell, and Demitra C. Bell as Directors. (PX6, Page 10). The amendment was signed by Demitra J. Bell, as President and dated July 27, 2016.

On March 2, 2017, Demitra J. Bell as President filed an Annual Report. (PX6, Page 11). This report identified Demitra J. Bell as President, Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer, and Gloria Andrews, Karen Ross, and Demitra C. Bell as Directors.

On February 1, 2018, Demitra J. Bell as President of Kids Teen Rider filed an Annual Report identifying Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer and Gloria Andrews, Karen Ross, and Demitra C. Bell as Directors.

On February 8, 2019, Demitra J. Bell filed an Annual Report as President. The report is signed by Demitra J. Bell and identifies him as President, Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer, and Karen Ross, Demitra C. Bell, and Sara Pewett as Directors of Kids Teen Rider. (PX6, Page 15).

On February 5, 2020, Demitra J. Bell filed an Annual Report as President. He identified himself as President, Tiffany Stephens as Secretary, Demitra J. Bell as Treasurer. Karen Ross, Gloria Andrews, and Demitra C. Bell were listed as Directors. (PX6, Page 17).

On March 12, 2021, the Annual Report filed by Demitra J. Bell lists himself as President of Kids Teen Rider, Tiffany Stephens as Secretary, and Gloria Andrews, Karen Ross, and Demitra C. Bell as Directors. (PX6, Page 19).

On March 4, 2022, Demitra J. Bell filed an Annual Report listing himself as President, Tiffany Stephens as Secretary, and Gloria Andrews, Karen Ross, and Demitra C. Bell as Directors. (PX6, Page 31).

On February 2, 2025, Demitra Bell, filed an Annual Report listing himself as President and Secretary of Kids Teen Rider and Tiffany Stephens as Secretary. (RX1-Andrews). Directors are identified as Gloria Ross, Demitra C. Bell, and Malik Bell.

All the corporate filings made on behalf of Kids Teen Rider, with the exception of the assumed name filing were signed by Demitra J. Bell as President of Kids Teen Rider.

At hearing Petitioner's counsel from the Illinois Attorney General's office stated on the record that the details concerning the identities of the officers and board members was

derived solely from the corporate filings of Kids Teen Rider on record with the Secretary of State's office and that no additional investigation was performed beyond the record review.

Antonio Smith, an investigator with the Department of Insurance, testified at hearing and confirmed that the names of the individual board members, Taye Im, Gloria Andrews, Karen Ross, Naketha Richards, and Sara Pewett were derived solely on the corporate filings signed by Demitra J. Bell. No investigation was performed to determine what, if any, activities the Board of Directors were engaged in or whether actual directors' meetings were conducted pursuant to the requirements for an Illinois not-for-profit corporation. As such the Commission notes that the testimony of individual Respondents Taye Im, Gloria Andrews, Karen Ross, Sara Pewett, and Naketha Richards concerning their actual involvement with Respondent Kids Teen Rider was unrebutted.

Investigator Smith testified that proper service was effectuated upon Demitra J. Bell giving notice of the informal compliance hearing held on August 4, 2020. Demitra J. Bell was not only the president of Kids Teen Rider but was also the registered agent. There was no appearance by any Respondent at the informal compliance hearing.

Mr. Smith testified that Kids Teen Rider was initially incorporated on March 24, 2008. The initial filing with the Secretary of State designated Demitra Bell, Tiffany Stephens, and Kenneth Stephens as directors. The stated corporate mission was to provide transportation services for disadvantaged children and teens. Investigator Smith further testified that in 2015 the premium for workers' compensation coverage for Kids Teen Rider, which listed 6 employees at the time would be \$6,000.00 annually.

Individual Respondents, Naketha Richard, Taye Im, Sara Pewett, Karen Ross, and Gloria Andrews were present and testified at hearing. Karen Ross and Gloria Andrews were represented by counsel. Respondents Naketha Richard, Sara Pewett, and Taye Im represented themselves at hearing.

Respondent Mr. Taye Im testified at hearing that he owned a small storefront property in Naperville, Illinois, and leased space to Tiffany Stephens and Kids Teen Rider on a six-month lease. Ms. Stephens paid the rent for the first several months on the office space and then broke her lease, leaving the storefront vacant without notice. Mr. Im also testified that he did some custom lettering on two of the vehicles operated by Kids Teen Rider.

Mr. Im testified that at no time did Ms. Stephens request that he serve as a board member of Kids Teen Rider. Mr. Im testified he in fact did not serve as a member of the Board of Directors of Kids Teen Rider despite being so designated by Demitra J. Bell on the corporate filings with the Illinois Secretary of State.

Respondent Karen Ross was called as a witness at hearing and testified that she first met Respondent Tiffany Stephens when Ms. Stephens was a daycare provider for her son. Respondent Stephens approached Ms. Ross in 2012 and invited her to an informational meeting about her not-for-profit business, Kids Teen Rider.

Ms. Ross testified that she attended an informal meeting where food was served. She characterized the event as more of a social gathering than a meeting. Ms. Ross attended the single meeting but denied that there was any business discussed. Ms. Ross testified that at no time was she aware that she had been identified as a member of the board of directors of Respondent. She denied that she was ever a member of the board. She testified that she did not conduct any business on behalf of Kids Teen Rider. She received several scheduling e-mails sent by Gloria Andrews concerning "meetings", but they were always cancelled. She attended only the single informational meeting. She was not aware that she had been identified as president of Respondent and denied that she ever consented to board service or designation as an officer. She denied any knowledge of workers' compensation coverage issues concerning Kids Teen Rider.

Respondent Gloria Andrews appeared at hearing and was called to testify. She testified that in 2012 she was called by Respondent Tiffany Stephens to attend an informational meeting at Kids Teen Rider. She testified that it was a gathering rather than a meeting and that no business was discussed. According to Ms. Andrews, Respondent Tiffany Stephens and her husband Demitra J. Bell ran the business "more like a family." She never had any agreement with Respondent Tiffany Stephens that she would serve on the board. She was never informed or aware that she had been listed as a board member from 2013 through 2025.

Respondent Andrews testified that she runs her own not-for-profit corporation and is therefore familiar with board requirements. She denies that she ever served as a board member with Respondent Kids Teen Rider. She assumed the business had been disbanded. She knew nothing about the operations of Kids Teen Rider and knew nothing about the insurance coverage issue until she was served. Ms. Andrews filed a complaint with the Attorney General's office when she learned that her name had been forged on corporate documents by Respondent Kids Teen Rider. She denies that she ever engaged in any discussions regarding Respondents' business. Ms. Andrews never signed any documents as a member of the board of directors.

Ms. Andrews testified that she had reviewed a 2013 document that contains her name. She denied that she had any interaction with Kids Teen Rider in 2013. Ms. Andrews was shown RX1 which contains the name Gloria Ross. Ms. Ross testified that Respondent Kids Teen Rider conflated the names Karen Ross and Gloria Andrews to create a fictional individual, "Gloria Ross", for fraudulent purposes.

Respondent Naketha Richards was called as a witness and testified at hearing. She first became involved with Kids Teen Rider in 2011 when Respondent Tiffany Stephens asked her to participate as a board member. Ms. Richards attended one "board meeting". She received scheduling e-mails concerning additional meetings. The meetings were all cancelled. Ms. Richards had a baby in 2012 and never heard from any Respondent again.

Ms. Richards first became acquainted with Tiffany Stephens when she provided in-home daycare services for her children in 2003. Ms. Richards testified that she did not know what was going on with Kids Teen Rider. She trusted Respondent Tiffany Stephens and feels Respondent

took advantage of that trust. She never received any directives from Respondent as to what was expected of her as a board member.

Ms. Richards testified that she and Gloria Andrews believed they were lending support to a worthy effort. She was only aware of the "purpose and vision" of Kids Teen Rider. She had no knowledge of the "schematics or infrastructure" of the organization. She was not aware of the number of employees or the number of vehicles operated by Respondent Kids Teen Rider. Ms. Richards testified that to her knowledge Kenneth Stephens and Jasmine and Demitra C. Bell were Tiffany Stephens' children. She knows no details concerning the employment arrangements Respondent Kids Teen Rider had with any of its employees. The witness testified that she conducted no business on behalf of Kids Teen Rider. Ms. Richards reported to the state that Respondent was using her name without her permission.

Respondent Sarah Pewett was called as a witness at hearing. Ms. Pewett first became involved with Respondent Kids Teen Rider in 2006 when Tiffany Stephens was transporting the witness' son to school. Tiffany Stephens was providing part-time day care services out of her home and transportation to school for Ms. Pewett's son for a period of three years. Ms. Pewett testified that Tiffany Stephens and her husband were the only drivers. Ms. Pewett was unaware of any other clients.

Respondent Tiffany Stephens mentioned to the witness about becoming a board member. Ms. Pewett did not sign anything concerning board membership. Ms. Pewett was working towards her master's degree and did not have time to become involved with board membership. She did not attend any board meetings. The witness considered herself a paying customer of Respondent Kids Teen Rider, not a board member.

The witness paid Kids Teen Rider for transportation services for her son. She received no compensation from Respondent. She was last in contact with Respondent Tiffany Stephens and her husband in approximately 2019. Upon being informed of the lawsuit Ms. Pewett did not attempt to contact Respondent Tiffany Stephens or anyone from Kids Teen Rider.

Pursuant to Section 3 of the Act, certain employers and their employees are automatically subject to the provisions of the Act if they engage in specific businesses, including: "Any business or enterprise in which electric, gasoline or other power-driven equipment is used in the operation thereof." 820 ILCS 305/3(15).

The Commission finds that Respondent's business falls under Section 3(15) of the Act in that they operated motor vehicles for transportation of children throughout the period of non-compliance. Respondent was required to maintain workers' compensation insurance. The Respondent has offered no evidence to the contrary.

The Commission's authority and jurisdiction over insurance non-compliance cases is authorized by the Act, as well as the Rules. Under Section 4 of the Act, all employers who come within the auspices of the Act are required to provide workers' compensation insurance, whether this is done through being self-insured, through security, indemnity or bond, or through a purchased policy. Under Section 4(d):

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 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.

Section 9100.00 of the Rules codifies the language of the Act, and additionally describes the notice of non-compliance required, as well as the procedures of the Insurance Compliance Division, and how hearings are to be conducted. Reasonable and proper notice, as noted above was provided to the Respondents. Section 9100.90 (d)(3)(D) of the Rules indicates 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." Petitioner's Exhibit 7 contains the certification from NCCI Holdings, Inc., indicating the periods Respondent did not have workers' compensation insurance. Respondents failed to offer any evidence of compliance with the Act.

In *State of Illinois v. Murphy Container Service, et al.*, 2007 Ill.Wrk.Comp. LEXIS 1216, the Commission 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; 7) the employer's ability to pay the assessed amount.

In the instant case, the Commission finds that the length of time in which the Respondents had been violating the Act in failing to obtain workers' compensation insurance was significant. Except for two very brief periods Respondent was non-compliant from 2008 when Kids Teen Rider was first incorporated until the time of hearing. The total number of days of non-compliance is 5,773, from March 24, 2008, through October 16, 2013, and March 6, 2014, through April 22, 2025. It is not known exactly how many employees

Respondents had as it was a family run business and family members were acting as drivers. At times however the number of employees was as many as seven.

The Commission concludes that Respondents Kids Teen Rider, Tiffany Stephens, Demitra J. Bell, and Kenneth Stephens knowingly and willfully failed to comply with the Act. Based upon the significant period of time that Respondents failed to comply with the Act, the Commission assesses a penalty of \$500 per day for a period of 5,773 days, as well as reimbursement for payment by the Injured Workers' Benefit Fund to an employee of Respondent in case number 19 WC 022539 in the amount of \$7,670.65. The Commission therefore awards \$2,894,170.65 against Respondents Kids Teen Rider, Tiffany Stephens, Demitra J. Bell, and Kenneth Stephens, individually and as officers of Kids Teen Rider.

The Commission declines to extend liability for the award to Respondents Gloria Andrews, Karen Ross, Naketha Richards, Sara Pewett, or Taye Im. Each of these Respondents appeared at hearing and testified that they had no knowledge that they were on the board for Kids Teen Rider and had no knowledge of any business practices such as insurance for the company. The documents from the Secretary of State that name these Respondents do not show that Respondents signed these documents or were otherwise involved in their drafting or submission to the Secretary of State. Thus, the Commission finds that these Respondents did not knowingly or willfully fail to comply with the Act.

The Commission, after considering the record in its entirety and being advised in the facts and applicable law, finds that Respondents Kids Teen Rider, Tiffany Stephens, Demitra J. Bell, and Kenneth Bell knowingly and willfully violated section 4(a) of the Act and section 9100.90 of the Rules during the period in question. As a result, Respondents Kids Teen Rider, Tiffany Stephens, Demitra J. Bell, and Kenneth Stephens shall be held liable for non-compliance with the Act and shall pay a penalty in accordance with section 4(d) of the Act. The Commission assesses a civil penalty against the Respondents under section 4 of the Act in the sum of \$2,894,170.65.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents Kids Teen Rider, Tiffany Stephens, Demitra J. Bell, and Kenneth Stephens, individually and as officers of Kids Teen Rider pay to the Illinois Workers' Compensation Commission the sum of \$2,894,170.65 pursuant to Section 4(d) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the 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 Workers' Compensation Commission; and 2) payment shall be mailed or presented within thirty (30) days of the final order of the Commission or order of the court of review after final adjudication to:

Illinois Workers' Compensation Commission Fiscal Department
69 W. Washington Street, Suite 900
Chicago, Illinois 60602

This decision may be judicially reviewed only as described in Section 19(f) of the Act. This

decision may be enforced in the same manner as a judgement entered by a court of competent jurisdiction and is a debt due and owing to the State and can be enforced to the same to the same extent as a judgement entered by a Circuit Court. 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 shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

February 26, 2026

SJM/msb
d: 12/16/25

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

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

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